

# House Daily Reader

Wednesday, February 20, 2002

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# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

726H0054

SENATE TAXATION COMMITTEE ENGROSSED NO.

**HB 1059** - 02/13/2002

Introduced by: Representatives Brown (Jarvis), Begalka, Broderick, Fryslie, Hennies (Don), Kooistra, McCaulley, Nachtigal, and Sebert and Senators Diedrich (Larry), de Hueck, and Dennert

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning property  
2 classifications and assessment appeals.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-11-16 be amended to read as follows:

5 10-11-16. Any ~~resident~~ property owner or taxpayer of a township or municipality, as an  
6 individual or through an attorney or agent, feeling aggrieved by anything in the assessment roll  
7 may appeal to the local board of equalization for the correction of alleged errors in the listing or  
8 valuation of the person's property. ~~The person shall notify the~~ Any lessee responsible for payment  
9 of taxes pursuant to the provisions of a lease shall be considered the taxpayer and may appeal  
10 anything in the assessment roll for the correction of alleged errors in the listing or valuation of  
11 the leased property. An appeal to the local board of equalization shall be perfected by mailing  
12 or by filing a notice of appeal with the clerk of the local board of equalization. If perfected by  
13 mailing, the postmark shall be conclusive evidence regarding the timeliness of the appeal. The  
14 clerk of the local board of equalization shall be notified of the appeal no later than the Thursday



1 preceding the third Monday in March. An appeal to the local board shall encompass the  
2 aggregate valuation of the property being appealed or the property classification.

3 Section 2. That § 10-11-16.1 be amended to read as follows:

4 10-11-16.1. A local board of equalization shall hear individual valuation, classification, and  
5 assessment questions of property owners or taxpayers who have appealed to the local board of  
6 equalization, and may make adjustments and corrections in the assessment roll. The board shall  
7 notify each appellant of the decision affecting the appellant's property in writing seven days after  
8 the adjournment of the local board of equalization.

9 Section 3. That § 10-11-22 be amended to read as follows:

10 10-11-22. Any ~~person~~ property owner or taxpayer feeling aggrieved may appeal from the  
11 decision of any local board of equalization to the board of equalization of the county in which  
12 the municipality or township is situated.

13 Section 4. That § 10-11-23 be amended to read as follows:

14 10-11-23. An appeal from the local board of equalization to a county board of equalization  
15 shall be perfected by mailing or by filing a written notice of appeal with the county auditor on  
16 or before the first Tuesday in April. If perfected by mailing, the postmark shall be conclusive  
17 evidence regarding the timeliness of the appeal. Appeals made pursuant to § 10-11-27 shall be  
18 perfected by filing a written notice of appeal with the county auditor on or before the first  
19 Tuesday in April. The county auditor shall file a copy of the notice of appeal with the appropriate  
20 clerk of the local board of equalization prior to the hearing of the appeal by the county board of  
21 equalization.

22 Section 5. That § 10-11-27 be amended to read as follows:

23 10-11-27. No complaint concerning property assessed in any district having a local board of  
24 equalization shall be considered unless it has first been made to such local board, except a

1 nonresident owner or nonresident taxpayer of the taxing district may be heard without such  
2 original complaint.

3 Section 6. That § 10-11-42 be amended to read as follows:

4 10-11-42. Any ~~person~~ owner or taxpayer feeling aggrieved by the decision of the county  
5 board of equalization relative to the assessment of its property or any taxing district or  
6 governmental subdivision or agency in which such property is located, feeling aggrieved by the  
7 decision of the county board of equalization may appeal to the Office of Hearing Examiners. An  
8 appeal to the Office of Hearing Examiners from a county board of equalization shall be perfected  
9 by mailing or by filing a notice of appeal with the chief administrative law judge, Pierre, South  
10 Dakota, no later than the third Friday in May. If perfected by mailing, the postmark shall be  
11 conclusive evidence regarding the timeliness of the appeal. The chief administrative law judge  
12 shall file a copy of the notice with the county director of equalization within ten days after receipt  
13 of notice of appeal. The county director of equalization shall file notice of appeal to the  
14 appropriate clerk of the local board of equalization prior to the hearing of the appeal by the  
15 Office of Hearing Examiners. The notice shall state informally the substance of the decision  
16 appealed from and the grounds upon which appeal is taken. The county board of equalization  
17 or any person pecuniarily interested in sustaining its decision, as well as the appellant, may be  
18 heard in person or by attorney upon appeals to the Office of Hearing Examiners. Nothing in this  
19 section prevents an appeal to the circuit court as provided in § 10-11-44, but an appeal to either  
20 tribunal excludes an appeal to the other.

21 Section 7. That § 10-11-67 be amended to read as follows:

22 10-11-67. Any resident, feeling aggrieved by anything in the assessment roll, may apply,  
23 personally or through an attorney or agent, to the consolidated board of equalization for the  
24 correction of alleged errors in the listing or valuation of the resident's property. A notice of a

1 complaint or grievance shall be mailed or filed in writing with the county auditor no later than  
2 the first Tuesday in April. If the notice is mailed, the postmark shall be conclusive evidence  
3 regarding the timeliness of the appeal. An appeal to the board shall encompass the aggregate  
4 valuation of the property being appealed or the property classification.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

466H0522

## SENATE ENGROSSED NO. **HB 1160** - 02/15/2002

Introduced by: Representatives Adelstein, Clark, and Murschel

1 FOR AN ACT ENTITLED, An Act to repeal certain tort liability arising out of causes of action  
2 based on seduction, abduction, and alienation of affections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 20-9-7 be repealed.

5 ~~—20-9-7. The rights of personal relation forbid:~~

6 ~~—(1)—The abduction of a husband from his wife or of a parent from his child;~~

7 ~~—(2)—The abduction or enticement of a wife from her husband, of a child from a parent, or~~  
8 ~~from a guardian entitled to its custody;~~

9 ~~—(3)—The seduction of a wife, daughter, or orphan sister.~~



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

391H0028

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1220** - 02/11/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Murschel, Bartling, Brown (Jarvis), Davis, Derby, Hennies (Thomas), Jensen, Juhnke, Kooistra, Madsen, and Slaughter and Senators Everist and Daugaard

1 FOR AN ACT ENTITLED, An Act to revise certain provisions with regard to child custody and  
2 to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Upon motion or by petition, a court may allow a person other than a parent to intervene in  
7 an action under this chapter involving child custody. In any matter under this chapter involving  
8 child custody, the court may, in its discretion, appoint a guardian ad litem or legal counsel to  
9 represent the child. The court may award full or partial custody, care, education, and visitation  
10 rights of the child to a person other than a parent.

11 Section 2. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 In determining any issue regarding custody of a child, the court shall be guided by the best



1 interests of the child. The court may consider any preference expressed by the child if the court  
2 finds the child is of sufficient age and intelligence to express a knowing and voluntary preference.  
3 In any dispute involving child custody, a presumption favoring a parent may be rebutted by  
4 showing serious detriment to the child as evidenced by one or more of the following  
5 extraordinary circumstances:

- 6 (1) The abandonment or persistent neglect of the child by the parent;
- 7 (2) The likelihood of serious physical or emotional harm to the child if placed in the  
8 parent's custody;
- 9 (3) The extended, unjustifiable absence of parental custody;
- 10 (4) The abdication of parental responsibilities;
- 11 (5) The provision of the child's physical, emotional, and other needs by persons other than  
12 the parent over a significant period of time;
- 13 (6) The existence of a bonded relationship between the child and a person other than the  
14 parent sufficient to cause significant emotional harm to the child in the event of a  
15 change in custody;
- 16 (7) The substantial enhancement of the child's well-being while under the care of a person  
17 other than the parent;
- 18 (8) The extent of the parent's delay in seeking to reacquire custody of the child;
- 19 (9) The demonstrated quality of the parent's commitment to raising the child;
- 20 (10) The likely degree of stability and security in the child's future with the parent;
- 21 (11) The extent to which the child's right to an education would be impaired while in the  
22 custody of the parent; or
- 23 (12) Any other circumstances that would substantially and adversely impact the welfare of  
24 the child.



1       Section 3. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       A judgment under section 1 of this Act awarding any person other than a biological parent  
4 custodial rights may award the biological parent with visitation rights with the child.

5       Section 4. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7       If a court awards a third party custodial rights to a child, the court may set child support in  
8 whatever amount it deems appropriate, and notwithstanding the provisions of any other statute  
9 to the contrary, may waive the biological parent's duty to provide monetary or other support for  
10 their child.

11       Section 5. The term, parent, as used in this Act, means any biological or adoptive parent. The  
12 term, biological parent, as used in this Act, means any biological or adoptive parent.

13       Section 6. Whereas, this Act is necessary for the immediate preservation of the public peace,  
14 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and  
15 effect from and after its passage and approval.

# State of South Dakota

## SEVENTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2002

843H0415

### SENATE ENGROSSED NO. **HB 1221** - 02/04/2002

Introduced by: Representatives Hargens, Bartling, Burg, Elliott, Hennies (Don), Hennies (Thomas), Holbeck, Jensen, Lange, Lintz, Madsen, Olson (Mel), Peterson (Jim), Pitts, Rhoden, Sigdestad, and Van Gerpen and Senators Duxbury, Daugaard, Dennert, Koskan, Putnam, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise the date for filing certain certificates of  
2 nomination.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 12-7-1 be amended to read as follows:

5 12-7-1. Any candidate for nonjudicial public office, except as provided in § 12-7-7, who is  
6 not nominated by a primary election may be nominated by filing with the secretary of state or  
7 county auditor as prescribed by § 12-6-4, not prior to January first at eight a.m. and not later  
8 than the ~~third~~ first Tuesday in June at five p.m. prior to the election, a certificate of nomination  
9 which shall be executed as provided in chapter 12-6. If the certificate of nomination is mailed by  
10 registered mail by the ~~third~~ first Tuesday in June at five p.m. prior to the election, it is timely  
11 submitted. The certificate shall specify that an independent candidate for nonjudicial public office  
12 shall designate the name of any national political party, or political party organized pursuant to  
13 chapter 12-5, with which the candidate has an affiliation. If no affiliation exists, the candidate  
14 shall be designated by the term, no party. It shall be signed by registered voters within the district



1 or political subdivision in and for which the officers are to be elected. The number of signatures  
2 required may not be less than one percent of the total combined vote cast for Governor at the  
3 last certified gubernatorial election within the district or political subdivision. An independent  
4 candidate for Governor shall certify the candidate's selection for lieutenant governor to the  
5 secretary of state prior to circulation of the candidate's nominating petition. The candidate and  
6 the candidate's selection for lieutenant governor or vice president shall sign the certification  
7 before it is filed. The State Board of Elections shall promulgate rules pursuant to chapter 1-26  
8 prescribing the forms for the certificate of nomination and the certification for lieutenant  
9 governor.

10 Section 2. The provisions of this Act are effective on January 1, 2003.

11 Section 3. That § 3-4-6 be amended to read as follows:

12 3-4-6. Appointments to state offices shall be made in writing and shall continue for the  
13 remainder of the unexpired term of office. Unless otherwise provided by law, all other  
14 appointments shall be made in writing and shall continue until the next general election and until  
15 a successor is elected and qualified. A vacancy must occur prior to ~~June~~ May first in an  
16 even-numbered year, other than in a year when the term of office would normally expire, for the  
17 office to be filled by election for the remainder of the unexpired term. Any person elected to an  
18 office that was previously vacant shall take office in the year following the election on the day  
19 of that year when a full term for that office would normally commence.

20 Appointments to state offices shall be filed with the secretary of state. Appointments to  
21 county offices shall be filed in the office of the county auditor and entered in the minutes of the  
22 commissioners' proceedings.

23 Section 4. That § 7-7-1.9 be amended to read as follows:

24 7-7-1.9. An officer shall be nominated and elected at the next general election to the

1 combined office provided for in § 7-7-1.8. If the election submitted pursuant to § 7-7-1.5 is held  
2 at a primary election, each candidate for the vacant officer shall run as an independent candidate  
3 as provided in chapter 12-7, except that the petition filing deadline shall be the first Tuesday in  
4 August. The officer shall be voted upon by the voters of the counties that have resolved to  
5 combine ~~such~~ the office. Such officer shall hold office for a term of four years commencing on  
6 the first Monday of January following ~~his~~ the officer's election.

7 Section 5. That § 7-8-9 be amended to read as follows:

8 7-8-9. ~~Commissioners~~ Any commissioner to be elected at the next general election following  
9 a redistricting of the county under § 7-8-6 or 7-8-7 shall be nominated by petition ~~in accordance~~  
10 ~~with the provisions of this code as to nominations of~~ pursuant to the provisions for nominating  
11 independent candidates for public office by petition. However, the filing deadline shall be the first  
12 Tuesday in August.

13 Section 6. That § 23-3-43.1 be amended to read as follows:

14 23-3-43.1. Any candidate for election to the office of county sheriff shall file with the county  
15 auditor by the first Tuesday of April of the election year a certification issued by the commission  
16 that such person meets the qualifications provided in § 23-3-43. However, any such candidate  
17 appointed to fill a vacancy by a party central committee pursuant to § 12-6-56 or who files an  
18 independent nominating petition shall file ~~such~~ a certification of qualification by the ~~second~~ first  
19 Tuesday of ~~August~~ June. A sheriff appointed to fill a vacancy by the county commission shall  
20 file with the county auditor ~~such~~ a certification of qualification within thirty days of ~~such~~ the  
21 appointment. Failure to file ~~such~~ a certification shall prevent the candidate's name from being  
22 placed on the ballot.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0724

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1302** - 02/13/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of standard guidelines to  
2 be used regarding child custody and visitation.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. For the purposes of this Act, the term, standard guidelines, means the child  
5 visitation guidelines established by court rules promulgated by the South Dakota Supreme Court  
6 pursuant to section 2 of this Act.

7 Section 2. The South Dakota Supreme Court shall promulgate court rules establishing  
8 standard guidelines to be used statewide for child visitation in divorce or separate maintenance  
9 actions or any other custody action or proceeding. The standard guidelines shall provide a  
10 framework for child visitation including frequency and time for child visitation; hours or days of  
11 visitation; definitions for weekends, holidays, birthdays, and other special occasions; and time  
12 periods for summer visitations. In establishing the standard guidelines, the court may consider  
13 varying ages and circumstances of children and treat varying ages and circumstances differently.

14 Section 3. Upon the filing of a summons and complaint for divorce or separate maintenance



1 or any other custody action or proceeding, the plaintiff shall also file and serve upon the  
2 defendant a copy of the standard guidelines. The standard guidelines attached to the summons  
3 shall become an order of the court upon fulfillment of the requirements of service. Any minor  
4 child of the marriage shall remain in the custody of the parent who has been the primary  
5 caregiver for the minor child for the majority of time in the thirty days preceding the filing of the  
6 summons and complaint, unless the parties agree otherwise. The standard guidelines shall apply  
7 and continue in effect, unless the parties agree, or the court orders otherwise. Imposition of the  
8 standard guidelines creates no presumption as to who shall be awarded custody at any hearing.

9 Section 4. Any agreement by the parties for visitation other than the standard guidelines shall  
10 be in writing, signed by both parties and filed with the court. The agreed plan shall be approved  
11 by court order and replace the standard guidelines or any plan previously filed.

12 Section 5. If either party objects to the initial custody arrangement in section 3 of this Act  
13 or the standard guidelines, the court shall order a hearing which shall be held not later than thirty  
14 days after the date of the objection. The court shall issue its temporary custody and visitation  
15 order after considering the best interests of the child consistent with the provisions of § 25-4-45.

16 Section 6. The standard guidelines are subject to any provision established by a South Dakota  
17 state court in the following: a temporary or permanent domestic protection order, an order  
18 arising out of an abuse or neglect proceeding, a bond condition arising out of a criminal case, and  
19 an order in any other proceeding affecting child custody or support.

20 Section 7. The court may order either party to pay attorney fees and costs in an action filed  
21 under this Act in accordance with § 15-17-38 or any other applicable statute.

22 Section 8. The parents are responsible for payment of child support in accordance with § 25-  
23 7-6.1.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0727

## SENATE ENGROSSED NO. **HB 1303** - 02/15/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise the Governor's emergency powers in the event of  
2 a terrorist or bioterrorist attack.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 33-15-8 be amended to read as follows:

5 33-15-8. In the event of disaster, war, act of terrorism as defined in state law, or emergency  
6 that is beyond local government capability, the Governor:

- 7 (1) May assume direct operational control over all or any part of the emergency  
8 management functions within the state which may affect all or any portion of the state;
- 9 (2) May declare an emergency or disaster to exist in the stricken area and employ  
10 emergency management to assist local authorities to affect relief and restoration;
- 11 (3) May call upon and use any facilities ~~and~~ equipment, other nonmedical supplies, and  
12 resources available from any source, other than personal or private funds, in order to  
13 carry out the purposes of this chapter by contributing to the expense incurred in  
14 providing relief in such amounts as he shall determine;
- 15 (4) May suspend the provisions of any rules of any state agency, if strict compliance with



1 the provisions of ~~such~~ the rule would in any way prevent, hinder, or delay necessary  
2 action in managing a disaster, war, act of terrorism, or emergency, including fire,  
3 flood, earthquake, severe high and low temperatures, tornado storm, wave action, oil  
4 spill, or other water or air contamination, epidemic, blight, drought, infestation,  
5 explosion, riot, or hostile military or paramilitary action, which is determined by the  
6 Governor to require state or state and federal assistance or actions to supplement the  
7 recovery efforts of local governments in alleviating the damage, loss, hardship, or  
8 suffering caused thereby; ~~and~~

9 (5) May control the ingress and egress in a designated disaster or emergency area, the  
10 movement of vehicles upon highways within the area, the movement of persons within  
11 the area, and the occupancy of premises within the area;

12 (6) May procure, acquire, store, distribute, and dispense any pharmaceutical agents or  
13 medical supplies located within the state as may be reasonable and necessary to  
14 respond to the disaster, emergency, or act of terrorism;

15 (7) May appoint and prescribe the duties of such out-of-state health care providers as may  
16 be reasonable and necessary to respond to the disaster, emergency, or act of  
17 terrorism;

18 (8) May provide for the examination and safe disposal of any dead body as may be  
19 reasonable and necessary to respond to the disaster, emergency, or act of terrorism;  
20 and

21 (9) May provide for the protection, construction or reconstruction, repair, and  
22 maintenance of public or private transportation facilities.

23 Section 2. That chapter 33-15 be amended by adding thereto a NEW SECTION to read as  
24 follows:



1       The powers granted to the Governor under this Act shall remain in effect for a period of six  
2   months and may be restored for one or more successive six-month periods by declaration of the  
3   Governor that the conditions permitting such powers persist.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0231

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 14** - 02/11/2002

Introduced by: The Committee on State Affairs at the request of the Department of Human Services

1 FOR AN ACT ENTITLED, An Act to revise certain requirements and responsibilities of the  
2 administrator of the Human Services Center.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 27A-4-3 be amended to read as follows:

5 27A-4-3. The secretary of human services shall appoint an administrator of the South Dakota  
6 Human Services Center who shall be a skilled administrator or a South Dakota licensed physician  
7 of accepted skill and ability. ~~Such person must have had experience of at least five years either~~  
8 The person shall have a degree and extensive experience in public or private institutions for the  
9 ~~mentally ill~~ administration including experience in a mental health setting and shall be of a good  
10 moral character. The administrator shall be the chief executive officer of the South Dakota  
11 Human Services Center. The administrator shall serve at the pleasure of the secretary of human  
12 services.

13 Section 2. That § 23A-27A-22 be amended to read as follows:

14 23A-27A-22. If a defendant confined under sentence of death appears to be mentally



1 incompetent to proceed, the warden having ~~him in~~ custody of the defendant shall forthwith notify  
2 the Governor, who shall appoint a commission of not less than three nor more than five  
3 disinterested duly licensed physicians, one of whom shall be the ~~superintendent~~ medical director  
4 of the Human Services Center or ~~his assistant~~ the director's designee, to examine the defendant  
5 and report to the Governor as to ~~his~~ the defendant's mental condition at the time of the  
6 examination.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

325H0346

## HOUSE EDUCATION COMMITTEE ENGROSSED NO. **SB 57** - 02/19/2002

Introduced by: Senators Sutton (Dan), Albers, Hutmacher, Koetzle, McCracken, McIntyre, Moore, Munson, and Olson (Ed) and Representatives Slaughter, Broderick, Brown (Richard), Flowers, Lange, Michels, and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to allow school boards to initiate an election to change the  
2 size of the school board and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-8-3 be amended to read as follows:

5 13-8-3. The voters of any school district may increase the number of board members to seven  
6 or to nine, or establish school board representation areas, by a majority vote of all voters voting  
7 at an election called and held as hereinafter provided. If a petition signed by ten percent of the  
8 registered voters of any school district, based upon the total number of registered voters at the  
9 last preceding general election, is presented to the board requesting that an election be called for  
10 the purpose of voting upon the question of the change of number of board members, or the  
11 establishment of school board representation areas, the board shall call an election. The school  
12 board may, by resolution, call for an election for the purpose of voting upon the question of the  
13 change of number of board members, or the establishment of school board representation areas.

14 The question shall be submitted to the voters at an election to be held not less than forty-five nor



1 more than sixty days from the date of the filing of such petition with the business manager. If  
2 such a petition is filed less than one hundred twenty days prior to the next annual election, the  
3 question shall be submitted at the annual election. Such election shall be held upon the same  
4 notice and conducted in the same manner as provided by chapter 13-7. Any increase or decrease  
5 in the number of board members shall be implemented at the next succeeding annual election.

6 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,  
7 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and  
8 effect from and after its passage and approval.

# State of South Dakota

## SEVENTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2002

490H0285

### SENATE ENGROSSED NO. **SB 58** - 01/25/2002

Introduced by: Senators Brown (Arnold), Albers, Cradduck, Daugaard, Diedrich (Larry), Everist, Greenfield, Ham, Hutmacher, McCracken, McIntyre, Moore, Munson, Olson (Ed), Putnam, Reedy, Sutton (Dan), Symens, and Vitter and Representatives Michels, Davis, Frost, Fryslie, Glenski, Hunhoff, McCoy, Pitts, Solum, and Van Etten

1 FOR AN ACT ENTITLED, An Act to establish a nursing workforce center under the direction  
2 of the Board of Nursing and to provide funding through a fee assessed upon nursing license  
3 renewal.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 36-9 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 The Board of Nursing shall establish a nursing workforce center. The board shall charge a  
8 fee of ten dollars upon the biennial renewal of each registered nurse and practical nurse license  
9 in addition to the license renewal fee for the funding of the nursing workforce center. Donations  
10 and bequests from persons to further the intent of the nursing workforce center or additional  
11 funds designated by the board may also be accepted and placed in the restricted fund.

12 Section 2. That chapter 36-9 be amended by adding thereto a NEW SECTION to read as  
13 follows:



1       The nursing workforce center may address issues regarding the supply, demand, and need  
2       for nurses, including issues of recruitment, retention, educational preparation, and utilization of  
3       nurses. In addition, the nursing workforce center may:

- 4       (1)    Maintain a database on the supply, demand, and need for nurses in the state;
- 5       (2)    Convene representatives of nurses, health care providers, consumers, educators,  
6              government officials, and other individuals in business and industry to review and  
7              comment on data analysis; make recommendations for strategic action; and evaluate  
8              effectiveness of actions implemented;
- 9       (3)    Provide electronic access to comprehensive information and research conducted by  
10             the nursing workforce center;
- 11       (4)    Evaluate the effectiveness of nursing education articulation and support for nursing  
12             education mobility;
- 13       (5)    Promote strategies to improve nursing workplace environments and promote nursing  
14             leadership development; and
- 15       (6)    Evaluate the effectiveness of state initiatives implemented to address nursing  
16             workforce capacities and requirements.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

507H0276

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 81** - 02/15/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Munson, de Hueck, Koetzle, McIntyre, and Sutton (Dan) and  
Representatives Olson (Mel), Bradford, Brown (Richard), Elliott, Jensen, and  
Kooistra

1 FOR AN ACT ENTITLED, An Act to limit the Department of Labor's authority to recommend  
2 settlements in labor disputes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 3-18 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 If its efforts as conciliator prove unsuccessful, the Department of Labor shall, if requested  
7 by either party, impartially investigate the matters in difference between the parties. The request  
8 to the department shall be mailed within twenty days after the conclusion of the conciliation  
9 procedure provided for in § 60-10-1. The department shall give each party ample opportunity  
10 for presentation of its final offer on each unresolved issue and the rationale supporting its final  
11 offer on each unresolved issue. Within twenty days following the presentations of the final offers  
12 of both parties, the department shall issue a recommendation on each unresolved issue and the  
13 rationale supporting each recommendation. The department shall recommend either the final





offer of the public employees or the final offer of the public employers on each unresolved issue and may not make any alternative recommendation. The department shall furnish a copy of its recommendation to each of the parties and to any local newspaper for publication for the information of the public.

Section 2. That chapter 3-18 be amended by adding thereto a NEW SECTION to read as follows:

Each party shall submit to the department a copy of the final offer made to the other party on each unresolved issue and the rationale supporting the final offer on each unresolved issue with proof of service of a copy upon the other party. Each party shall also submit a draft, in writing, that includes all tentative agreements reached by the parties. The parties may continue to negotiate all offers until an agreement is reached or until a recommendation and rationale are issued by the department.

Section 3. That § 3-18-8.1 be amended to read as follows:

3-18-8.1. In case of impasse or failure to reach an agreement in negotiations conducted under the provisions of this chapter, either party may request the Department of Labor to intervene under the provisions of §§ 60-10-1 to 60-10-3, inclusive. Such request shall be mailed within ten days after a written statement is delivered to the designated representative for the other party declaring an impasse. Nothing in this section prohibits the parties to an impasse from adopting any other procedure to facilitate a settlement that is mutually agreeable.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

442H0358

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

**SB 89** - 02/19/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Dennert, Hutmacher, McIntyre, Moore, and Sutton (Dan) and  
Representatives Elliott, Olson (Mel), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to allow school boards to initiate a vote relating to the  
2 imposition of an excess tax levy and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-12-43 be amended to read as follows:

5 10-12-43. The governing body of the school district may raise additional revenues for general  
6 fund purposes only, from property tax through the imposition of an excess tax levy. The  
7 governing body of a school district may impose the excess tax levy with an affirmative two-thirds  
8 vote of the governing body on or before July fifteenth of the year prior to the year the taxes are  
9 payable. The decision of the governing body to originally impose or subsequently increase an  
10 excess tax levy shall be published within ten days of the decision. The decision may be referred  
11 upon a resolution of the governing body of the school district or by a petition signed by at least  
12 five percent of the registered voters in the school district and filed with the governing body  
13 within twenty days of the publication of the decision. The referendum election shall be held on  
14 or before October first of the year prior to the time the taxes are payable.



1       Section 2. Whereas, this Act is necessary for the support of the state government and its  
2       existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
3       force and effect from and after its passage and approval.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

753H0412

## HOUSE EDUCATION COMMITTEE ENGROSSED NO. **SB 94** - 02/19/2002

Introduced by: Senators Madden, Albers, Apa, Bogue, Brosz, Brown (Arnold), Cradduck, Duxbury, Everist, Greenfield, Ham, Hutmacher, Koskan, Moore, Olson (Ed), Putnam, Staggers, Sutton (Dan), and Vitter and Representatives Napoli, Adelstein, Bartling, Brown (Richard), Duenwald, Hargens, Hennies (Don), Hennies (Thomas), Lange, McCaulley, Monroe, Olson (Mel), Pederson (Gordon), Peterson (Bill), and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to permit the posting or display of the United States flag,  
2 giving the pledge of allegiance, and singing the national anthem.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 13-24 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The right to post the United States flag shall not be limited or infringed upon in any public  
7 school classroom, public school building, at any public school event, or on any public school  
8 uniform. The right to recite the pledge of allegiance to the flag of the United States shall not be  
9 limited or infringed upon, and the national anthem may be sung during any school day or school  
10 event.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

494H0464

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 133** - 02/19/2002

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Diedrich (Larry), Albers, Brosz, Daugaard, de Hueck, Dennert, Diedrich (Elmer), Duxbury, Greenfield, Hutmacher, Koetzle, Koskan, McCracken, McIntyre, Moore, Munson, Olson (Ed), Putnam, Sutton (Dan), Symens, and Vitter and Representatives Jaspers, Begalka, Broderick, Burg, Derby, Flowers, Frost, Fryslie, Gillespie, Glenski, Hansen (Tom), Hanson (Gary), Hargens, Holbeck, Hundstad, Hunhoff, Jensen, Juhnke, Klaudt, Kooistra, Lange, Nachtigal, Olson (Mel), Peterson (Jim), Pitts, Sebert, Sigdestad, Slaughter, Smidt, Sutton (Duane), Valandra, Van Gerpen, and Wick

1 FOR AN ACT ENTITLED, An Act to revise the distribution of revenue from the petroleum  
2 release compensation and tank inspection fee, to increase the excise tax on certain motor  
3 fuels, and to declare an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 34A-13-20 be amended to read as follows:

6 34A-13-20. A petroleum release compensation and tank inspection fee is imposed upon any  
7 petroleum products upon which the fuel excise tax is imposed by §§ 10-47B-5 to 10-47B-10,  
8 inclusive, and 10-47B-13. None of the exemptions from fuel excise tax allowed in § 10-47B-19  
9 shall apply to this fee. The parties required to pay the fuel excise tax under the provisions of  
10 §§ 10-47B-21 to 10-47B-26, inclusive, and 10-47B-29 and 10-47B-31 are liable for payment of



1 the petroleum release and tank inspection fee. In cases where the fuel is exempt from the fuel  
2 excise tax under the provisions of subdivisions 10-47B-19(1), (3), and (5), the supplier shall pay  
3 the fee. Responsibility for payment of the fee ceases if the petroleum product is sold and  
4 delivered by a licensed exporter outside of the state. The amount of the fee imposed is twenty  
5 dollars per one thousand gallons of petroleum. ~~Beginning on January 1, 2003, the fee is ten~~  
6 ~~dollars per one thousand gallons of petroleum.~~

7 The Fifty percent of the revenue collected pursuant to this section shall be deposited monthly  
8 in the state highway fund and fifty percent of the revenue collected pursuant to this section shall  
9 be distributed monthly in the following manner:

- 10 (1) ~~During fiscal year 1999, forty-two percent shall be deposited in the state capital~~  
11 ~~construction fund created in § 5-27-1. Beginning in fiscal year 2000 to December 31,~~  
12 ~~2002, inclusive, fifty percent shall be deposited in the state capital construction fund~~  
13 ~~created in § 5-27-1. Beginning on January 1, 2003, seventy-eight and seven-tenths~~  
14 ~~percent shall be deposited in the state capital construction fund; and~~
- 15 (2) ~~During fiscal year 1999, fifty-eight percent shall be deposited into the petroleum~~  
16 ~~release compensation fund. Beginning in fiscal year 2000 to December 31, 2002,~~  
17 ~~inclusive, fifty percent shall be deposited in the petroleum release compensation fund.~~  
18 ~~Beginning on January 1, 2003, twenty-one and three-tenths percent shall be deposited~~  
19 ~~in the petroleum release compensation~~ state highway fund.

20 Section 2. The effective date of section 1 of this Act is April 1, 2002.

21 Section 3. That § 34A-13-20 be amended to read as follows:

22 34A-13-20. A petroleum release compensation and tank inspection fee is imposed upon any  
23 petroleum products upon which the fuel excise tax is imposed by §§ 10-47B-5 to 10-47B-10,  
24 inclusive, and 10-47B-13. None of the exemptions from fuel excise tax allowed in § 10-47B-19

shall apply to this fee. The parties required to pay the fuel excise tax under the provisions of §§ 10-47B-21 to 10-47B-26, inclusive, and 10-47B-29 and 10-47B-31 are liable for payment of the petroleum release and tank inspection fee. In cases where the fuel is exempt from the fuel excise tax under the provisions of subdivisions 10-47B-19(1), (3), and (5), the supplier shall pay the fee. Responsibility for payment of the fee ceases if the petroleum product is sold and delivered by a licensed exporter outside of the state. The amount of the fee imposed is twenty dollars per one thousand gallons of petroleum. ~~Beginning on January 1, 2003, the fee is ten dollars per one thousand gallons of petroleum.~~

~~The~~ Fifty percent of the revenue collected pursuant to this section shall be deposited monthly in the ethanol fuel fund and fifty percent of the revenue collected pursuant to this section shall be distributed monthly in the following manner:

- (1) ~~During fiscal year 1999, forty-two percent shall be deposited in the state capital construction fund created in § 5-27-1. Beginning in fiscal year 2000 to December 31, 2002, inclusive, fifty percent shall be deposited in the state capital construction fund created in § 5-27-1. Beginning on January 1, 2003, seventy-eight and seven-tenths percent shall be deposited in the state capital construction fund; and~~
- (2) ~~During fiscal year 1999, fifty-eight percent shall be deposited into the petroleum release compensation fund. Beginning in fiscal year 2000 to December 31, 2002, inclusive, fifty percent shall be deposited in the petroleum release compensation fund. Beginning on January 1, 2003, twenty-one and three-tenths percent shall be deposited in the petroleum release compensation~~ state highway fund.

Section 4. The effective date of section 3 of this Act is April 1, 2003.

Section 5. That § 5-27-5 be amended to read as follows:

5-27-5. ~~During fiscal year 1999, the Bureau of Finance and Management shall transfer each~~

1 ~~month three and six-tenths percent of the monthly state capital construction fund revenues from~~  
2 ~~the state capital construction fund to the public and special transportation fund.~~ Beginning in  
3 fiscal year 2000 to December 31, 2002, inclusive, the Bureau of Finance and Management shall  
4 transfer each month three and one-half percent of the monthly state capital construction fund  
5 revenues from the state capital construction fund to the public and special transportation fund.  
6 Beginning on January 1, 2003, the Bureau of Finance and Management shall transfer each month  
7 two and six-tenths percent of the monthly state capital construction fund revenues from the state  
8 capital construction fund to the ~~public and special transportation~~ state highway fund.

9 Section 6. That § 10-47B-4 be amended to read as follows:

10 10-47B-4. The fuel excise tax rates for the tax imposed by this chapter are as follows:

- 11 (1) Motor fuel (except ethanol blends, E85 and M85 blends, and aviation gasoline) ~~\$.22~~  
12 \$.24 per gallon;
- 13 (2) Special fuel (except jet fuel) -- ~~\$.22~~ \$.24 per gallon;
- 14 (3) Ethanol blends -- ~~\$.20~~ \$.22 per gallon;
- 15 (4) Aviation gasoline -\$.06 per gallon;
- 16 (5) Jet fuel -\$.04 per gallon;
- 17 (6) E85 and M85 -- ~~\$.10~~ \$.12 per gallon;
- 18 (7) E85 and M85 used in aircraft -\$.04 per gallon;
- 19 (8) Liquid petroleum gas -- ~~\$.20~~ \$.22 per gallon;
- 20 (9) Compressed natural gas -- ~~\$.10~~ \$.12 per gallon.

21 Section 7. The effective date of section 6 of this Act is April 1, 2002, and section 6 of this  
22 Act is repealed on April 1, 2004.

23 Section 8. That § 10-47B-162 be amended to read as follows:

24 10-47B-162. A production incentive payment of twenty cents per gallon is available to



1 ethanol producers for ethyl alcohol which is fully distilled and produced in South Dakota. To be  
2 eligible for this payment, the ethyl alcohol shall be denatured and subsequently blended with  
3 gasoline to create ethanol blend. The ethyl alcohol shall be ninety-nine percent pure and shall be  
4 distilled from cereal grains. Annual production incentive payments for any facility may not  
5 exceed one million dollars. No facility may receive any production incentive payments in an  
6 amount greater than ten million dollars. The cumulative annual production incentive payments  
7 made under this section may not exceed ~~an amount which has been appropriated by the~~  
8 ~~Legislature for this purpose and has been deposited into the ethanol fuel fund in the state treasury~~  
9 seven million dollars. Payments from the ethanol fuel fund shall be made on a first in time basis  
10 until the fiscal year appropriation is reached. During the month when the appropriation limit is  
11 to be reached, all claims received by month end shall be reimbursed proportionately on a pro-rata  
12 basis for each gallon claimed.

13 Section 9. That § 10-47B-164 be amended to read as follows:

14 10-47B-164. Any money in the ethanol fuel fund is continuously appropriated for purposes  
15 of providing ethanol production payments to qualified ethanol producers. The department may  
16 receive and approve ethanol production incentive payment claims and authorize the issuance of  
17 payment warrants to licensed ethanol producer claimants based on claims presented by the  
18 licensees. At the end of each fiscal year, any unobligated cash in excess of one hundred thousand  
19 dollars in the ethanol fuel fund shall be transferred to the state ~~capital construction~~ highway fund.

20 Section 10. Whereas, this Act is necessary for the support of the state government and its  
21 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
22 force and effect from and after its passage and approval.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0624

## SENATE ENGROSSED NO. **SB 134** - 02/07/2002

Introduced by: Senator Diedtrich (Elmer) and Representatives Frost and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to revise the authority of the South Dakota Student Loan  
2 Corporation and the South Dakota Housing Development Authority regarding private  
3 activity bonds.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 1-7-10 be amended to read as follows:

6 1-7-10. There is hereby established in the state treasury a private activity bond fees fund. Any  
7 receipts or revenues into this fund are to be expended only if recommended by the Governor and  
8 approved by majority vote of the special committee created in chapter 4-8A or appropriated by  
9 an act of the Legislature. ~~Receipts or revenues into this fund from the South Dakota student loan~~  
10 ~~corporation may only be expended on programs or projects that directly benefit students~~  
11 ~~attending higher education institutions in South Dakota. Receipts or revenues into this fund from~~  
12 ~~the South Dakota Housing Development Authority may only be expended on programs or~~  
13 ~~projects that directly enhance the quality of residential housing in South Dakota.~~ All money in  
14 the fund shall be expended in accordance with Title 4 on warrants drawn by the state auditor on  
15 vouchers approved by the Governor.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

463H0546

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 136 - 02/01/2002**

Introduced by: Senators Cradduck, Bogue, Brosz, Drake, Greenfield, Hutmacher, McCracken, Putnam, and Whiting and Representatives Sebert, Abdallah, Broderick, Brown (Jarvis), Duniphan, Hansen (Tom), Hunhoff, McCaulley, Pummel, Richter, Solum, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to allow state chartered banks to expand their investment  
2 options to include certain annuities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 51A-4-25 be amended to read as follows:

5 51A-4-25. A bank may purchase for its own account investment securities and registered  
6 mutual funds that invest exclusively in securities of the United States or its agencies and annuities  
7 as defined in section 2 of this Act under such limits and restrictions as the commission may ~~by~~  
8 ~~rule~~ prescribe by rule, promulgated pursuant to chapter 1-26. In no event may the total amount  
9 of the investment securities of any one obligor or maker held by the bank for its own account  
10 exceed twenty percent of the capital stock and surplus and ten percent of the undivided profits  
11 of such bank except as provided in §§ 51A-4-26 and 51A-4-31 to 51A-4-41, inclusive.

12 Section 2. That chapter 51A-4 be amended by adding thereto a NEW SECTION to read as  
13 follows:



1       For the purposes of § 51A-4-25, an annuity is an investment that credits interest from the  
2       inception of the contract, has an interest guarantee period that may be from thirty days to one  
3       year in length, and is backed by the assets of the insurer. The insurer shall be rated in the top  
4       three categories of both Standard and Poor's Corporation and Moody's Investors Service. The  
5       annuity shall be fully liquid and may not be subject to any surrender charges or any other  
6       restrictions on redemptions.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

673H0673

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**SB 148** - 02/14/2002

Introduced by: Senators Brosz, Brown (Arnold), Daugaard, and Whiting and Representatives  
Solum, Koistinen, and Konold

1 FOR AN ACT ENTITLED, An Act to revise and extend certain provisions relating to the  
2 licensure of drivers who have experienced epileptic, narcoleptic, or other convulsions,  
3 seizures, or blackouts.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 32-12-5.1 be amended to read as follows:

6 32-12-5.1. The Department of Commerce and Regulation ~~may~~ shall deny the issuance of a  
7 motor vehicle operator's license, motorcycle operator's license, restricted minor's permit,  
8 motorcycle restricted minor's permit, instruction permit, or motorcycle instruction permit to any  
9 individual who has experienced epileptic, narcoleptic, or other convulsions, seizures, or  
10 blackouts, until the individual has experienced a period of twelve months without any such  
11 episode. However, upon receipt of a statement signed by the ~~applicant~~ applicant's physician that  
12 the applicant's condition is adequately controlled by medication, the applicant is continuing to  
13 take medication, and the applicant is under the care of a physician, the Department of Commerce  
14 and Regulation may issue a temporary permit to the applicant. This temporary permit is subject



1 to the provisions of § 32-12-36 and is reviewable by the department every six months, or until  
2 the applicant has gone a period of twelve months without any episode.

3 Section 2. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 The Department of Commerce and Regulation shall revoke, for a period of twelve months,  
6 any motor vehicle operator's license and any other such licenses or permits previously issued to  
7 an individual who, during an epileptic, narcoleptic, or other convulsion, seizure, or blackout,  
8 causes a motor vehicle or motorcycle accident resulting in death, serious bodily injury, or  
9 substantial property damage. At the conclusion of the twelve-month period, the individual is  
10 eligible to apply for a temporary permit pursuant to the conditions provided in § 32-12-5.1.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

607H0547

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**SB 151** - 02/14/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Munson, Albers, Brown (Arnold), de Hueck, Dennert, Hagen, Hutmacher, Kleven, McIntyre, and Symens and Representatives Davis, Bartling, Begalka, Broderick, Brown (Richard), Burg, Clark, Duniphan, Flowers, Glenski, Hargens, Hennies (Thomas), Holbeck, Koistinen, Madsen, Murschel, Nachtigal, Nesselhuf, Olson (Mel), Peterson (Bill), Peterson (Jim), Pummel, Richter, Solum, Van Gerpen, and Wick

1 FOR AN ACT ENTITLED, An Act to regulate deferred presentment service transactions.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Check," a personal check signed by the maker and made payable to a licensee;

5 (2) "Commission," the State Banking Commission;

6 (3) "Completed deferred presentment service transaction," a transaction that is completed

7 when a check is redeemed by the maker by payment in full to the licensee in cash,

8 money order, or certified check or by negotiation or deposit by the licensee;

9 (4) "Deferred presentment service transaction," a transaction made under a written  
10 agreement between a licensee and the maker of a check under which the licensee:

11 (a) Pays to the maker of the check the amount of the check, less the fees permitted

12 under this Act, and accepts a check from the maker dated on the date of the



1 transaction and agrees to hold the check for a period of time before negotiation  
2 or presentment; or

3 (b) Accepts a check dated after the date of the transaction and agrees to hold the  
4 check for deposit until the date written on the check;

5 (5) "Director," the director of the Division of Banking of the Department of Commerce  
6 and Regulation;

7 (6) "Division," the Division of Banking;

8 (7) "Licensee," a person licensed under this Act to provide deferred presentment services.

9 Section 2. No person may engage in the business of deferred presentment service transactions  
10 without a license issued under this Act. A separate license is required for each location from  
11 which the business of deferred presentment service transactions is conducted. Any state or  
12 national bank, savings bank, trust company, savings or building and loan association, bank  
13 holding company as defined in 12 USC 1841, as amended as of January 1, 2002, or federal credit  
14 union is exempt from this Act, and any person selling goods or services and providing financing  
15 for such goods or services is exempt from this Act.

16 Section 3. Any person who engages in the business of deferred presentment service  
17 transactions shall apply for a license as prescribed by this Act. The applicant shall apply for a  
18 license under oath on forms supplied by the division. The application shall contain the name of  
19 the applicant's business, proof of surety bond, address of the business, and other information as  
20 required by the director by rule or order. The applicant shall pay an original license fee as set by  
21 rules of the commission pursuant to chapter 1-26 not to exceed two hundred fifty dollars. If the  
22 application of an existing licensee is for an additional location, the application need only include  
23 the location and identity of the location manager, plus any changes from the existing license, or  
24 such other information the director may consider necessary.



1       Section 4. The director shall approve or deny an application for a license within thirty days  
2 of receipt of any application.

3       Section 5. The applicant shall submit with the application for a license a bond in an amount  
4 not to exceed the total of five thousand dollars for the first license and one thousand dollars for  
5 each additional license. The bond shall be satisfactory to the director and issued by a surety  
6 company qualified to do business as a surety in this state. The bond shall be in favor of this state  
7 for the use of this state and any person who has a cause of action under this Act against the  
8 licensee. The bond shall be conditioned on:

9       (1)    The licensee's faithful performance under this Act and any rules adopted pursuant to  
10            this Act; and

11       (2)    The payment of any amounts that are due to the state or another person during the  
12            calendar year for which the bond is given.

13       The aggregate liability of a surety to all persons damaged by a licensee's violation of this Act  
14 may not exceed the amount of the bond.

15       Section 6. The director shall investigate the facts and, after review, either deny or grant a  
16 license based on the findings.

17       Section 7. A licensee shall keep the license conspicuously posted in the place of business of  
18 the licensee.

19       Section 8. Any license shall be renewed on July first. To renew a license, the licensee shall  
20 file for renewal by June fifteenth. The renewal application shall include a renewal fee not to  
21 exceed two hundred fifty dollars, as set by the commission pursuant to chapter 1-26, proof of  
22 surety bond, and any other information as required by the director, by rule or order.

23       Section 9. The licensee may not transfer or assign the license. The licensee may only transact  
24 business under a name shown on the license. Any name change is subject to prior approval by

1 the director.

2 Section 10. Each licensee's business location shall be licensed. The director shall approve or  
3 deny any change of location. The director shall amend the license to show the new location upon  
4 granting approval.

5 Section 11. The director may, upon ten days notice to the licensee, issue a cease and desist  
6 order from any practice that does not conform to the requirements set forth in this Act or rules  
7 adopted by the commission.

8 Section 12. The director may revoke a license for good cause pursuant to chapter 1-26. If  
9 the licensee is the holder of more than one license, the director may revoke any or all of the  
10 licenses.

11 Section 13. An action may also be brought by the attorney general or the division, or both,  
12 to enjoin a licensee from engaging in or continuing a violation or from doing any act in  
13 furtherance thereof. In any action, an order or judgment may be entered awarding a temporary  
14 or permanent injunction.

15 Section 14. In addition to any other means provided by law for the enforcement of a  
16 restraining order or injunction, the court, in which the action is brought, may impound, and  
17 appoint a receiver for, the property and business of the defendant, including books, papers,  
18 documents, and records, as the court may deem reasonably necessary to prevent violations of  
19 this Act. The receiver, when so appointed and qualified, shall control the custody, collection,  
20 administration, and liquidation of the property and business.

21 Section 15. No person may engage in the business of deferred presentment service  
22 transactions without a license. A violation of this section is a Class 1 misdemeanor.

23 Section 16. Any money received by the division pursuant to this Act shall be deposited in the  
24 banking revolving fund.

1       Section 17. Each licensee, whether a corporation or otherwise, shall pay the annual tax  
2       provided in chapter 10-43, upon the net income of the licensee, and measured by the net income  
3       assignable to such business in South Dakota. The annual tax provided by this section may not  
4       be less than twenty-four dollars.

5       Section 18. Except for taxes on real property and license fees and other fees imposed by this  
6       Act, the tax imposed in section 17 of this Act is in lieu of all other taxes and license fees, state,  
7       county, or local, upon the business of the licensee, or upon any money, credits, or other assets  
8       of the licensee whether tangible or intangible, and which money, credits, or other assets are used  
9       for or in connection with the conduct of business transacted in South Dakota. However, amounts  
10      determined to be in excess of business capital requirements are not exempt from other taxes.

11      Section 19. Each licensee shall annually file with its renewal application a report of income  
12      and financial condition for the preceding license year or any other relevant information requested  
13      in writing by the director. These reports shall be under oath and on forms prescribed by the  
14      division by rule or order.

15      Section 20. The division shall annually conduct an examination of business records and  
16      accounts of any licensee licensed under this Act. The director may order an examination if  
17      circumstances require a special examination. The director may charge back to the licensee any  
18      cost associated with an on-site examination. The director may waive an on-site examination and  
19      only require an annual self-examination. If a licensee conducts a self-examination, the licensee  
20      shall provide any information requested under oath and on forms provided by the division by  
21      order or rule.

22      Section 21. Before disbursing funds under a deferred presentment service transaction, a  
23      licensee shall provide to the maker of the check a clear and conspicuous printed notice  
24      indicating:

1       (1)    That a deferred presentment service transaction is not intended to meet long-term  
2           financial needs;

3       (2)    That the maker of a check should use a deferred presentment service transaction only  
4           to meet short-term cash needs;

5       (3)    That the maker of a check will be required to pay additional fees if the deferred  
6           presentment service transaction is renewed rather than paid in full when due. If the  
7           transaction is renewed, any amount paid in excess of the fee applies to the payoff  
8           amount;

9       (4)    A schedule of fees charged for deferred presentment service;

10      (5)    Any information required under federal law.

11      A violation of this section is a Class 1 misdemeanor.

12      Section 22. A licensee may not disburse more than five hundred dollars to the maker of a  
13      check in a deferred presentment service transaction. A violation of this section is a Class 1  
14      misdemeanor.

15      Section 23. A licensee may not engage in a deferred presentment service transaction with a  
16      customer who has an aggregate face value of all outstanding checks from any one maker  
17      exceeding five hundred dollars which is payable to the same or any other licensee. A licensee may  
18      rely on a written representation of a maker regarding the existence of any outstanding checks for  
19      deferred presentment held by a licensee other than the licensee receiving the representation. A  
20      violation of this section is a Class 1 misdemeanor.

21      Section 24. A licensee may not renew a deferred presentment service transaction more than  
22      four times. No renewal may be allowed unless the maker of the check pays the outstanding fee  
23      at the time of the renewal.

24      Section 25. Each deferred presentment service transaction, including a renewal, must be

documented by a written agreement signed by the maker of the check. The written agreement must contain the following:

- (1) The name of the licensee;
- (2) The transaction date;
- (3) The amount of the check;
- (4) The dates any payments are due and the amount of payments;
- (5) A statement of the total amount of fees charged, expressed as a dollar amount and as an annual percentage rate;
- (6) The method used to compute the charges;
- (7) An explanation of the charges; and
- (8) Any charge that may be applied for delinquency.

The written agreement must authorize the licensee to defer presentment or negotiation of the check until a specified date. The maker of a check may redeem the check from the licensee at any time before the negotiation or presentment of the check without prepayment penalty by making payment to the licensee. However, the maker may rescind the transaction by the close of the following business day at no cost. A violation of this section is a Class 1 misdemeanor.

Section 26. If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or a stop payment order, the licensee has the right to all civil remedies available to collect the check. The licensee may contract for and collect a returned check charge not to exceed thirty dollars per customer, per check, per year. No other fee or charge may be collected as a result of a returned check or as a result of default by the maker of the check in timely payment to the licensee. A violation of this section is a Class 1 misdemeanor.

Section 27. Each licensee shall conspicuously post in the licensee's licensed location a notice of the fees imposed for the deferred presentment service. A violation of this section is a Class

1 1 misdemeanor.

2 Section 28. A licensee may not renew, repay, refinance, or consolidate a deferred  
3 presentment service transaction with the proceeds of another deferred presentment service  
4 transaction with that licensee by the same maker or customer. A violation of this section is a  
5 Class 1 misdemeanor.

6 Section 29. A licensee shall provide a notice in a prominent place on each deferred  
7 presentment service agreement in no less than twelve-point type in substantially the following  
8 form:

9 State law prohibits this business from allowing customers to have outstanding at any one  
10 time, deferred presentment service transactions totaling more than five hundred dollars.

11 A violation of this section is a Class 1 misdemeanor.

12 Section 30. Any licensee may advertise in any medium. No licensee may advertise any  
13 statement or representation, including rates, terms, or conditions for making or negotiating loans  
14 that is false, misleading, or deceptive, or that refers to the supervision of business by the state.  
15 A violation of this section is a Class 1 misdemeanor.

16 Section 31. That § 54-4-37 be amended to read as follows:

17 54-4-37. Any state or national bank, savings bank, trust company, savings or building and  
18 loan association, ~~or federal credit union,~~ or any business conducting deferred presentment service  
19 transactions pursuant to this Act is exempt from §§ 54-4-36 to 54-4-63, inclusive.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

924H0422

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 157** - 02/05/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senator Vitter and Representative Derby

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning who may hold a light  
2 wine license.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 35-4-2.2 be amended to read as follows:

5 35-4-2.2. A license authorized under subdivision 35-4-2(12) may only be issued to the owner  
6 or operator of a restaurant or a motel-hotel facility and shall permit the licensee to serve the  
7 enumerated beverages between 12:00 noon and 12:00 p.m. of each day of the week including  
8 Sunday. The term restaurant as used ~~herein shall mean~~ in this section means only a room  
9 regularly and in a bona fide manner used and kept open for the serving of meals to guests for  
10 compensation which has suitable table accommodations for at least fifty guests ~~therein~~ at one and  
11 the same time, and a connected kitchen ~~connected therewith~~ containing conveniences for cooking  
12 sufficient to provide meals in a bona fide manner for fifty guests at one and the same time. The  
13 term motel-hotel facility as used in this section means a facility used and kept open for the  
14 hosting of large groups of guests for compensation, which has at least seventy-five beds that are



1 suitable lodging accommodations.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0711

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **SB 166** - 02/19/2002

Introduced by: The Committee on Education at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation to the Department of Education  
2 and Cultural Affairs to reimburse fees and provide a stipend for National Board for  
3 Professional Teaching Standards certified teachers, to provide for a teacher enhancement  
4 program, and to revise the calculation of state aid to education.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. There is hereby appropriated from the general fund the sum of forty-eight  
7 thousand dollars (\$48,000), or so much thereof as may be necessary, to the Department of  
8 Education and Cultural Affairs for the purpose of making the payments in accordance with § 13-  
9 42-26.

10 Section 2. The secretary of the Department of Education and Cultural Affairs shall approve  
11 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

12 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by  
13 June 30, 2003, shall revert in accordance with § 4-8-21.

14 Section 4. There is hereby established an education enhancement program within the  
15 Department of Education and Cultural Affairs. The education enhancement program shall



1 distribute money to school districts to be used to reward teachers who have demonstrated their  
2 excellence in the teaching profession.

3 Section 5. Any money appropriated to the Department of Education and Cultural Affairs for  
4 education enhancement shall be distributed to school districts as provided by this Act.

5 Section 6. If a school district meets the criteria established by this Act, the Department of  
6 Education and Cultural Affairs shall allocate money which may be appropriated for education  
7 enhancement to each school district based on the school district's pro rata share of statewide  
8 average daily membership.

9 Section 7. Criteria established by the Department of Education and Cultural Affairs for  
10 school districts to receive money appropriated for education enhancement include but are not  
11 limited to:

12 (1) A school district may not reduce or offset the salary of a teacher with money received  
13 for the purpose of education enhancement;

14 (2) A school district shall develop a plan to reward teachers with money received for the  
15 purpose of education enhancement; and

16 (3) The plan to reward teachers with money received for the purpose of education  
17 enhancement shall be developed with the advice and counsel of members of the  
18 community, administration, and teachers.

19 Section 8. The Department of Education and Cultural Affairs shall promulgate rules pursuant  
20 to chapter 1-26 to implement the provisions of this Act.

21 Section 9. That § 13-13-10.1 be amended to read as follows:

22 13-13-10.1. Terms used in this chapter mean:

23 (1) "Average daily membership," the average number of resident and nonresident  
24 kindergarten through twelfth grade pupils enrolled in all schools operated by the

1 school district during the previous regular school year, minus average number of  
2 pupils for whom the district receives tuition, except pupils described in subdivision  
3 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the  
4 average number of pupils for whom the district pays tuition;

5 (1A) Nonresident students who are in the care and custody of the Department of Social  
6 Services, the Unified Judicial System, the Department of Corrections, or other state  
7 agencies and are attending a public school may be included in the average daily  
8 membership of the receiving district when enrolled in the receiving district. When  
9 counting a student who meets these criteria in its general enrollment average daily  
10 membership, the receiving district may begin the enrollment on the first day of  
11 attendance. The district of residence prior to the custodial transfer may not include  
12 students who meet these criteria in its general enrollment average daily membership  
13 after the student ceases to attend school in the resident district;

14 (2) "Adjusted average daily membership," calculated as follows:

15 (a) For districts with an average daily membership of two hundred or less, multiply  
16 1.2 times the average daily membership;

17 (b) For districts with an average daily membership of less than six hundred, but  
18 greater than two hundred, ~~raise the average daily membership to the 0.8293~~  
19 ~~power and multiply the result times 2.98~~ multiply the average daily membership  
20 times 0.9 and add 60 to the product;

21 (c) For districts with an average daily membership of six hundred or more,  
22 multiply 1.0 times their average daily membership;

23 (3) "Index factor," is the annual percentage change in the consumer price index for urban  
24 wage earners and clerical workers as computed by the Bureau of Labor Statistics of

1 the United States Department of Labor for the year before the year immediately  
2 preceding the year of adjustment or three percent, whichever is less;

3 (3A) "Enrollment adjustment," is one-half of the negative of the annual percent change in  
4 the statewide general enrollment average daily membership for the year before the  
5 year immediately preceding the year of adjustment;

6 (4) "Per student allocation," for the period January 1, 1997, to June 30, 1997, inclusive,  
7 is \$1,675. For school fiscal year 1998, beginning on July 1, 1997, the per student  
8 allocation shall be \$3,350 increased by the index factor. Each school fiscal year  
9 thereafter, the per student allocation shall be the previous fiscal year's per student  
10 allocation increased by the index factor, plus the enrollment adjustment;

11 (5) "Local need," the per student allocation multiplied by the adjusted average daily  
12 membership;

13 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by  
14 applying the levies established pursuant to § 10-12-42;

15 (7) "General fund balance," the unreserved fund balance of the general fund, less general  
16 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers  
17 out of the general fund for the previous school fiscal year;

18 (8) "General fund balance percentage," is a school district's general fund balance divided  
19 by the school district's total general fund expenditures for the previous school fiscal  
20 year, the quotient expressed as a percent;

21 (9) "General fund base percentage," is the general fund balance percentage as of June 30,  
22 2000. However, the general fund base percentage can never increase and can never  
23 be less than twenty percent;

24 (10) "Allowable general fund balance," the fund base percentage multiplied by the district's

1           general fund expenditures in the previous school fiscal year;

2       (11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5  
3           percentage points;

4       (12) "General fund exclusions," revenue a school district has received from the imposition  
5           of the excess tax levy pursuant to § 10-12-43; revenue a school district has received  
6           from gifts, contributions, grants, or donations; revenue a school district has received  
7           under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the  
8           general fund set aside for a noninsurable judgment.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

843H0688

## HOUSE TAXATION COMMITTEE ENGROSSED NO. **SB 178** - 02/14/2002

Introduced by: Senators de Hueck, Greenfield, and Symens and Representatives Garnos,  
Madsen, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to revise the procedure for assessing certain agricultural  
2 land.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-6-33.2 be amended to read as follows:

5 10-6-33.2. Capacity of land in agricultural use to produce agricultural products shall be based  
6 on average yields under natural conditions, ~~in the case of~~ for land producing crops or plants; and  
7 on the average "acres per animal unit," ~~in the case of grazing for noncrop land; said.~~ The average  
8 shall affect each operating unit and shall be based, to the extent possible, on the ten-year period  
9 immediately preceding the tax year in issue. In determining ~~such~~ the capacity to produce, the  
10 county director of equalization ~~and/or~~ and the county board of equalization ~~must take into~~  
11 ~~consideration~~ may consider yields, ~~and/or~~ and carrying capacity, as determined by the soil  
12 conservation service, the agricultural stabilization and conservation service, the extension  
13 service, federal land bank, the Department of Revenue, and private lending agencies dealing with  
14 land production capacities.



1       Section 2. That § 10-6-33.16 be amended to read as follows:

2       10-6-33.16. The secretary of revenue may enter into a contract for the collection of cash rent  
3       information by county for the purpose of § 10-6-33.15. The secretary of revenue shall make such  
4       information available for use by any county director of equalization. Cash rent information shall  
5       be adjusted by soil survey statistics if available.

6       Section 3. That § 10-6-33.15 be amended to read as follows:

7       10-6-33.15. For the purposes of § 10-6-33.14, the agricultural income value shall be  
8       determined using capitalized actual annual cash rent. The actual annual cash rent is the actual  
9       annual cash rent, ~~excluding the actual per acre tax on agricultural land~~, determined through an  
10      analysis of actual arm's length rental agreements collected within the county in the year prior to  
11      the year for which the income value is being determined. The actual cash rent shall include the  
12      per acre tax on agricultural land if such tax is the responsibility of the lessee, is an express  
13      provision of the rental agreement, and is paid by the lessee in addition to the actual rental  
14      income. The annual cash rent shall be capitalized at eight percent.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0729

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**SB 180** - 02/19/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: The Committee on Commerce at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to regulate unsolicited electronic commerce.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 37-24-6 be amended by adding thereto a NEW SUBDIVISION to read as  
4 follows:

5 Send or cause to be sent an unsolicited commercial electronic mail message that does not  
6 include in the subject line of such message "ADV:" as the first four characters. If the message  
7 contains information that consists of explicit sexual material that may only be viewed, purchased,  
8 rented, leased, or held in possession by an individual eighteen years of age and older, the subject  
9 line of each message shall include "ADV:ADLT" as the first eight characters. An unsolicited  
10 commercial electronic mail message does not include a message sent to a person with whom the  
11 initiator has an existing personal or business relationship or a message sent at the request or  
12 express consent of the recipient.





# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0721

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 182** - 02/15/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise the procedures for opting out of the property tax  
2 freeze and for levying or increasing a property tax.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-12-43 be amended to read as follows:

5 10-12-43. The governing body of the school district may raise additional revenues for general  
6 fund purposes only, from property tax through the imposition of an excess tax levy. The  
7 governing body of a school district may impose the excess tax levy with an affirmative two-thirds  
8 vote of the governing body on or before July fifteenth of the year prior to the year the taxes are  
9 payable. On any excess tax levy approved after July 1, 2002, the governing body of the taxing  
10 district shall specify in the resolution the year or number of years the excess tax levy will be  
11 applied. No excess levy may be imposed for a period longer than five years unless the governing  
12 body again complies with the provisions of § 10-12-43.

13 The requirements for an announcement made pursuant to this section are as follows:

14 (1) The decision of the governing body to originally impose or subsequently increase an  
15 excess tax levy shall be first published within ten days of the decision;



(2) Publication shall be made at least twice in the legal newspaper designated pursuant to § 13-8-10, with no fewer than five days between publication dates, before the opt out takes effect;

(3) The announcement shall be at least one-fourth of a page in size;

(4) The announcement shall be headed with the following statement in a typeface no less than one-half inch or thirty-six point type: "ATTENTION TAXPAYERS: NOTICE OF PROPERTY TAX INCREASE OF \$(fill in amount)." The remainder of the announcement shall consist of a reproduction of the "Resolution for Opt Out," including the amount that property taxes will be increased annually by the proposed opt out and a statement of the right to refer the decision of the board to a vote of the people as provided in this section. The secretary of revenue, in rules promulgated pursuant to chapter 1-26, shall prescribe a uniform form to be used by the school district for notification of taxpayers as required by this section.

However, the requirements of subdivisions (3) and (4) shall be waived if:

(A) The opt out is for less than fifteen thousand dollars; or

(B) A copy of the resolution for opt out is mailed to every property taxpayer in the local governmental unit, by first class mail or bulk mail, within twenty days of the decision to opt out; and

(C) A copy of the resolution for opt out is delivered to each newspaper, radio, and television outlet that delivers or transmits into the school district.

For the purposes of subsections (A), (B), and (C), the first publication is not deemed to have occurred until three days after the mailing is sent or the resolution is delivered to the official newspaper.

The opt out decision may be referred to a vote of the people upon a petition signed by at

1 least five percent of the registered voters in the school district and filed with the governing body  
2 within twenty days of the first publication of the decision. The referendum election shall be held  
3 on or before October first of the year prior to the time the taxes are payable.

4 The governing body of the school district may rescind an opt out decision by a majority vote  
5 of the governing body of the school district.

6 The amount originally imposed or subsequently increased by the school district may be  
7 rescinded by the taxpayers if a vote is initiated. The petition to initiate to rescind the opt out shall  
8 be signed by at least five percent of the registered voters in the school district and filed with the  
9 governing body no later than July fifteenth in the year prior to the year the taxes are payable. The  
10 election shall be held on or before October first preceding the year the taxes are payable. The  
11 excess levy is rescinded if approved by an affirmative vote of a majority of the votes cast in the  
12 taxing district.

13 Any petition filed January first or after does not affect taxes payable that year.

14 Section 2. That § 10-13-36 be amended to read as follows:

15 10-13-36. The governing body of a taxing district may exceed the limit pursuant to  
16 § 10-13-35 through the imposition of an excess tax levy. The governing body of a taxing district  
17 may impose an excess tax levy with an affirmative two-thirds vote of the governing body on or  
18 before July fifteenth of the year prior to the year the taxes are payable. On any excess tax levy  
19 approved after July 1,2002, the governing body of the taxing district shall specify in the  
20 resolution the year or number of years the excess tax levy will be applied. No excess levy may  
21 be imposed for a period longer than five years unless the governing body again complies with the  
22 provisions of § 10-13-36.

23 The requirements for an announcement made pursuant to this section are as follows:

24 (1) The decision of the governing body to originally impose or subsequently increase an

excess tax levy shall be published within ten days of the decision;

(2) Publication shall be made at least twice in the legal newspaper designated by the governing body pursuant to law, with no fewer than five days between publication dates, before the opt out takes effect;

(3) The announcement shall be at least one-fourth of a page in size;

(4) The announcement shall be headed with the following statement in a typeface no less than one-half inch or thirty-six point type: "ATTENTION TAXPAYERS: NOTICE OF PROPERTY TAX INCREASE OF \$(fill in amount)." The remainder of the announcement shall consist of a reproduction of the "Resolution for Opt Out," including the amount that property taxes will be increased annually by the proposed opt out and a statement of the right to refer the decision of the board to a vote of the people as provided in this section. The secretary of revenue, in rules promulgated pursuant to chapter 1-26, shall prescribe a uniform form to be used by the taxing district for notification of taxpayers as required by this section.

However, the requirements of subdivisions (3) and (4) shall be waived if:

(A) The opt out is for less than fifteen thousand dollars; or

(B) A copy of the resolution for opt out is mailed to every property taxpayer in the local governmental unit, by first class mail or bulk mail, within twenty days of the decision to opt out; and

(C) A copy of the resolution for opt out is delivered to each newspaper, radio, and television outlet that delivers or transmits in the local governmental unit's boundaries.

For the purposes of subsections (A), (B), and (C), the first publication is not deemed to have occurred until three days after the mailing is sent or the resolution is delivered to the official newspaper.

1       The opt out decision may be referred to a vote of the people upon a petition signed by at  
2       least five percent of the registered voters in the taxing district and filed with the respective  
3       governing body within twenty days of the first publication of the decision. The referendum  
4       election shall be held on or before October first preceding the year the taxes are payable. The  
5       taxing districts may not exceed the levy limits provided in chapter 10-12 except for the  
6       provisions in § 10-12-36.

7       The governing body of the taxing district may rescind an opt out decision by a majority vote  
8       of the governing body of the taxing district.

9       The amount originally imposed or subsequently increased by the taxing district may be  
10      rescinded by the taxpayers if a vote is initiated. The petition to initiate to rescind the opt out shall  
11      be signed by at least five percent of the registered voters in the taxing district and filed with the  
12      governing body no later than July fifteenth in the year prior to the year the taxes are payable. The  
13      election shall be held on or before October first preceding the year the taxes are payable. The  
14      excess levy is rescinded if approved by an affirmative vote of a majority of the votes cast in the  
15      taxing district.

16      Any petition filed January first or after does not affect taxes payable that year.

17      Section 3. That chapter 10-12 be amended by adding thereto a NEW SECTION to read as  
18      follows:

19      The decision of the governing body of a school district to increase the levy or impose a new  
20      levy for the school district pension fund, capital outlay fund, or special education fund may be  
21      referred to a vote of the people upon a petition signed by at least five percent of the registered  
22      voters in the school district and filed with the governing body within twenty days of the first  
23      publication of the decision. The referendum election shall be held on or before October first of  
24      the year prior to the time the taxes are payable.

Section 4. That chapter 10-12 be amended by adding thereto a NEW SECTION to read as follows:

The decision of the governing body to increase the levy or impose a new levy for the school district pension fund, capital outlay fund, or special education fund is subject to public announcement according to the following requirements:

(1) The decision of the governing body shall be first published within ten days of the decision;

(2) Publication shall be made at least twice in the legal newspaper designated pursuant to § 13-8-10, with no fewer than five days between publication dates, before the new levy or increased levy takes effect;

(3) The announcement shall be at least two newspaper columns in width;

(4) The announcement shall be headed with the following statement: "ATTENTION TAXPAYERS: NOTICE OF PROPERTY TAX INCREASE OF \$(fill in amount)."

The remainder of the announcement shall consist of a reproduction of the "Resolution for Tax Increase," including the amount that property taxes will be increased annually by the proposed tax increase and a statement of the right to refer the decision of the board to a vote of the people as provided in this section. The secretary of revenue, in rules promulgated pursuant to chapter 1-26, shall prescribe a uniform form to be used by the school district for notification of taxpayers as required by this section.

However, the requirements of subdivisions (3) and (4) may be waived if:

(A) The tax increase is for less than fifteen thousand dollars; or

(B) A copy of the resolution for tax increase is mailed to every property taxpayer in the local governmental unit, by first class mail or bulk mail, within twenty days of the decision to tax increase; and

1       (C)    A copy of the resolution for tax increase is printed in each official newspaper in the  
2               local governmental unit's boundaries.

3       For the purposes of subsections (A), (B), and (C), the first publication is not deemed to have  
4   occurred until three days after the mailing is sent or the resolution is delivered to the official  
5   newspaper.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0720

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 184** - 02/15/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to protect the children of South Dakota against sexual  
2 exploitation by criminalizing certain conduct involving children and the internet, to provide  
3 for civil remedies, to require certain people to report suspected violations, and to revise  
4 certain provisions regarding the unlawful use of computers.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That § 22-22-22 be repealed.

7 ~~22-22-22. Prohibited sexual act, as used in §§ 22-22-23, 22-22-23.1, and 22-22-24 means,~~  
8 ~~sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism, fellatio,~~  
9 ~~cunnilingus, or incest and any other sexual activity including nudity if such sexual activity is~~  
10 ~~depicted for the purpose of sexual stimulation or gratification of any person who might view~~  
11 ~~such depiction. Encouraging, aiding, abetting, or enticing any person to commit any such~~  
12 ~~prohibited sexual act as provided in this section is a prohibited sexual act.~~

13 Section 2. That § 22-22-23 be repealed.

14 ~~22-22-23. Any person who causes or knowingly permits the photographing or filming of a~~  
15 ~~minor under the age of sixteen years to engage in a prohibited sexual act or in the simulation of~~





1 ~~such act is guilty of a Class 4 felony. Any person who photographs or films a minor under the~~  
2 ~~age of sixteen years engaging in a prohibited sexual act or in the simulation of such an act is~~  
3 ~~guilty of a Class 4 felony.~~

4 Section 3. That § 22-22-23.1 be repealed.

5 ~~— 22-22-23.1. Any person who knowingly possesses any depiction fixed in any tangible~~  
6 ~~medium of expression of a minor under the age of eighteen years engaging in a prohibited sexual~~  
7 ~~act or in the simulation of such act or whose knowing possession encourages, aids, abets, or~~  
8 ~~entices any person to commit a prohibited sexual act is guilty of a Class 6 felony.~~

9 ~~— For the purposes of this section, a depiction includes any depiction, representation, or~~  
10 ~~description, however perceived, and any data compilation or set of commands intended for use~~  
11 ~~to store, to retrieve, or to generate such depictions, representations, or descriptions by any~~  
12 ~~electronic means.~~

13 ~~— For the purposes of this section, the term, tangible media of expression, includes, without~~  
14 ~~limitation, printed materials, plastic media, photographs, film, and any electronic communications~~  
15 ~~systems used to display depictions.~~

16 Section 4. That § 22-22-24 be amended to read as follows:

17 22-22-24. Any person who sells, or displays for sale, any book, magazine, pamphlet, slide,  
18 photograph, ~~or~~ film, or electronic or digital media image depicting a minor ~~under the age of~~  
19 ~~sixteen years~~ engaging in a prohibited sexual act, or engaging in an activity that involves nudity,  
20 or in the simulation of any such act is guilty of a Class 6 felony.

21 Section 5. That § 22-19A-1 be amended to read as follows:

22 22-19A-1. Any person:

23 (1) Who willfully, maliciously, and repeatedly follows or harasses another person; ~~or~~

24 (2) Who makes a credible threat to another person with the intent to place that person in

1 reasonable fear of death or great bodily injury; or

2 (3) Who willfully, maliciously, and repeatedly harasses another person by means of any

3 verbal, electronic, digital media, mechanical, telegraphic, or written communication;

4 is guilty of the crime of stalking. Stalking is a Class 1 misdemeanor.

5 Section 6. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Terms used in this Act mean:

8 (1) "Adult," a person eighteen years of age or older;

9 (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited  
10 sexual acts;

11 (3) "Child" or "minor," any person under the age of eighteen years;

12 (4) "Computer," an electronic, magnetic, optical, electrochemical, or other high-speed  
13 data processing device performing logical, arithmetic, or storage functions and  
14 includes any data storage facility or communications facility directly related to or  
15 operating in conjunction with such device, including wireless communication devices  
16 such as cellular phones. The term also includes any on-line service, internet service,  
17 or internet bulletin board;

18 (5) "Deviant sexual intercourse," sexual conduct between persons not married to each  
19 other consisting of contact between the penis and the anus, the mouth and the penis,  
20 or the mouth and the vulva;

21 (6) "Digital media," any electronic storage device, including a floppy disk or other  
22 magnetic storage device or any compact disc that has memory and the capacity to  
23 store audio, video, or written materials;

24 (7) "Harmful to minors," any reproduction, imitation, characterization, description, visual

1 depiction, exhibition, presentation, or representation, of whatever kind or form,  
2 depicting nudity, sexual conduct, or sexual excitement if it:

- 3 (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;  
4 (b) Is patently offensive to prevailing standards in the adult community as a whole  
5 with respect to what is suitable material for minors; and  
6 (c) Taken as a whole, is without serious literary, artistic, political, or scientific  
7 value for minors.

8 This term does not include a mother's breast-feeding of her baby;

- 9 (8) "Masochism," sexual gratification achieved by a person through, or the association  
10 of sexual activity with, submission or subjection to physical pain, suffering,  
11 humiliation, torture, or death;

- 12 (9) "Nudity," the showing or the simulated showing of the human male or female genitals,  
13 pubic area, or buttocks with less than a fully opaque covering; or the showing of the  
14 female breast with less than a fully opaque covering of any portion thereof below the  
15 top of the nipple; or the depiction of covered male genitals in a discernibly turgid state  
16 for the purpose of creating sexual excitement. This term does not include a mother's  
17 breast-feeding of her baby irrespective of whether or not the nipple is covered during  
18 or incidental to feeding;

- 19 (10) "Obscene," the status of material which:

- 20 (a) The average person, applying contemporary community standards, would find,  
21 taken as a whole, appeals to the prurient interest;  
22 (b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and  
23 (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

24 This term does not include a mother's breast-feeding of her baby;

- 1       (11) "Person," includes individuals, children, firms, associations, joint ventures,  
2       partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and  
3       all other groups or combinations;
- 4       (12) "Sadism," sexual gratification achieved through, or the association of sexual activity  
5       with, the infliction of physical pain, suffering, humiliation, torture, or death;
- 6       (13) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition  
7       of being fettered, bound, or otherwise physically restrained, for the purpose of  
8       deriving sexual satisfaction, or satisfaction brought about as a result of sadistic  
9       violence, from inflicting harm on another or receiving such harm oneself;
- 10      (14) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual organ  
11      of another or the anal or vaginal penetration of another by any other object. This term  
12      does not include an act done for a bona fide medical purpose;
- 13      (15) "Sexual bestiality," any sexual act, actual or simulated, between a person and an  
14      animal involving the sex organ of the one and the mouth, anus, or vagina of the other;
- 15      (16) "Prohibited sexual act," actual or simulated sexual intercourse, deviant sexual  
16      intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or  
17      sadomasochistic abuse; actual or simulated exhibition of the genitals or the pubic or  
18      rectal area in a lewd or lascivious manner; actual physical contact with a person's  
19      clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female,  
20      breast with the intent to arouse or gratify the sexual desire of either party; defecation  
21      or urination for the purpose of creating sexual excitement in the viewer; or any act or  
22      conduct which constitutes sexual battery or simulates that sexual battery is being or  
23      will be committed. The term includes encouraging, aiding, abetting or enticing any  
24      person to commit any such acts as provided in this subdivision. The term does not

1 include a mother's breast-feeding of her baby;

2 (17) "Sexual excitement," the condition of the human male or female genitals if in a state  
3 of sexual stimulation or arousal;

4 (18) "Sexually oriented material," any book, article, magazine, publication, visual depiction  
5 or written matter of any kind or any drawing, etching, painting, photograph, motion  
6 picture film, or sound recording that depicts sexual activity, actual or simulated,  
7 involving human beings or human beings and animals, that exhibits uncovered human  
8 genitals or the pubic region in a lewd or lascivious manner, or that exhibits human  
9 male genitals in a discernibly turgid state, even if completely and opaquely covered;

10 (19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this  
11 section that creates the appearance of such conduct and that exhibits any uncovered  
12 portion of the breasts, genitals, or anus;

13 (20) "Visual depiction," any developed and undeveloped film, photograph, slide and  
14 videotape, and any photocopy, drawing, printed or written material, and any data  
15 stored on computer disk, digital media, or by electronic means that are capable of  
16 conversion into a visual image.

17 Section 7. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 A person is guilty of possessing, manufacturing, or distributing child pornography if the  
20 person:

21 (1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the  
22 simulation of such an act;

23 (2) Causes or knowingly permits the creation of any visual depiction of a minor engaged  
24 in a prohibited sexual act, or in the simulation of such an act; or

(3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act.

Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 4 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 3 felony. Further, the court shall order a mental examination of the person. The examiner shall report to the court whether treatment of the person is indicated.

Section 8. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as follows:

A person is guilty of sexual exploitation of a minor if the person causes or knowingly permits a minor to engage in an activity that:

- (1) Is harmful to minors, or in the simulation of such an activity;
- (2) Involves nudity, or in the simulation of such an activity; or
- (3) Is obscene, or in the simulation of such an activity.

Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation a Class 5 felony. Further, the court shall order a mental examination of the person. The examiner shall report to the court whether treatment of the person is indicated.

Section 9. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in section 10 of this Act mean:

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- (1) "Minor," a person fifteen years of age or younger; and
- (2) "Solicit," to seduce, lure, entice or persuade, or attempt to seduce, lure, entice or persuade a specific person by telephone, in person, by letter, by using a computer or any other electronic means.

Section 10. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as follows:

- A person is guilty of solicitation of a minor if the person eighteen years of age or older:
- (1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or
  - (2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.

The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 5 felony. Further, the court shall order a mental examination of the person. The examiner

shall report to the court whether treatment of the person is indicated.

Section 11. That § 22-22-30 be amended to read as follows:

22-22-30. For the purposes of §§ 22-22-31 to 22-22-39, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:

- (1) Rape as set forth in § 22-22-1;
- (2) Sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult and the adult is convicted of a felony;
- (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2 if committed by an adult;
- (4) Incest as set forth in § 22-22-19.1 if committed by an adult;
- (5) ~~Photographing a child in an obscene act as set forth in § 22-22-23~~ Possessing, manufacturing, or distributing child pornography as set forth in section 7 of this Act;
- (6) ~~Possession of child pornography as set forth in § 22-22-23.1~~ Sale of child pornography as set forth in section 4 of this Act;
- (7) ~~Sale of obscene pictures of a child as set forth in § 22-22-24~~ Sexual exploitation of a minor as set forth in section 8 of this Act;
- (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- (10) Criminal pedophilia as set forth in § 22-22-30.1;
- (11) Felony indecent exposure as set forth in former § 22-24-1 or indecent exposure as set forth in § 22-24-1.2;
- (12) Solicitation of a minor as set forth in section 10 of this Act;
- (13) An attempt to commit any of the crimes listed in this section; or



(13)(14) Any crime committed in a place other than this state which would constitute a sex crime under this section if committed in this state.

Section 12. That § 23A-27-14.1 be amended to read as follows:

23A-27-14.1. Notwithstanding §§ 23A-27-14 and 23A-27-17, ~~a~~ any person who has received an order pursuant to § 23A-27-13 for a conviction of subdivision 22-22-1(1), subdivision 22-22-1(5) or § 22-22-7, or violations of sections 4, 7, 8, and 10 of this Act, who is licensed or seeks to be licensed as a certified teacher may have his or her application refused or license revoked as provided in § 13-42-10.

Section 13. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as follows:

Any person, not a citizen or resident of this state, whose actions or conduct constitute a violation of this Act, and whose actions or conduct involve a child residing in this state, or someone the person reasonably believes is a child residing in this state, is for the purpose of this Act deemed to be transacting business in this state and by that act:

- (1) Submits to the jurisdiction of the courts of this state in any civil proceeding commenced under this Act; and
- (2) Constitutes the secretary of state as agent for service of legal process in any civil proceeding commenced under this Act; and consents that service of legal process shall be made by serving a copy upon the secretary of state or by filing a copy in the secretary of state's office, and that this service shall be sufficient service if, within one day after service, notice of the service and a copy of the process are sent by registered mail by plaintiff to the person at the person's last-known address and proof of such mailing filed with the clerk of court within one day after mailing.

The service of legal process upon any person who is subject to the jurisdiction of the courts

1 of this state, as provided in this section, may also be made by personally serving the summons  
2 upon the person outside this state with the same force and effect as though summons had been  
3 personally served within this state. Such service shall be made in like manner as service within  
4 this state. No order of court is required. An affidavit of the server shall be filed stating the time,  
5 manner and place of service. The court may consider the affidavit, or any other competent  
6 proofs, in determining whether service has been properly made.

7 Section 14. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 Any person, except a minor, who knowingly participates in any conduct proscribed by this  
10 Act is liable for civil damages.

11 Section 15. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Any of the following persons may bring an action for damages caused by another person's  
14 conduct as proscribed by this Act:

- 15 (1) The child;
- 16 (2) A parent, legal guardian, or sibling of a victimized child;
- 17 (3) A medical facility, insurer, governmental entity, employer, or other entity that funds  
18 a treatment program or employee assistance program for the child or that otherwise  
19 expended money or provided services on behalf of the child;
- 20 (4) Any person injured as a result of the willful, reckless, or negligent actions of a person  
21 who knowingly participated in conduct proscribed by this Act.

22 If the parent or guardian is named as a defendant in the action, the court shall appoint a  
23 special guardian to bring the action on behalf of the child.

24 Section 16. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person entitled to bring an action under section 15 of this Act may seek damages from  
3 any person, except a minor, who knowingly participated in the production or in the chain of  
4 distribution of any visual depiction proscribed by this Act.

5 Section 17. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Any person entitled to bring an action under section 15 of this Act may recover all of the  
8 following damages:

- 9 (1) Economic damages, including the cost of treatment and rehabilitation, medical  
10 expenses, loss of economic or educational potential, loss of productivity, absenteeism,  
11 support expenses, accidents or injury, and any other pecuniary loss proximately  
12 caused by the proscribed conduct;
- 13 (2) Noneconomic damages, including physical and emotional pain, suffering, physical  
14 impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss  
15 of companionship, services, and consortium, and other nonpecuniary losses  
16 proximately caused by the proscribed conduct;
- 17 (3) Exemplary damages;
- 18 (4) Attorneys' fees; and
- 19 (5) Disbursements.

20 Section 18. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 Two or more persons may join in one action under this Act as plaintiffs if their respective  
23 actions have at least one common occurrence of proscribed conduct under this Act and if any  
24 portion of the period of such conduct overlaps with the period for every other plaintiff. Two or

1 more persons may be joined in one action under this Act as defendants if those persons are liable  
2 to at least one plaintiff.

3 Section 19. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Any person against whom a judgment has been rendered under this Act is not eligible to  
6 exempt any property, of whatever kind, from process to levy or process to execute on the  
7 judgment. Any assets sought to satisfy a judgment under this Act that are named in a forfeiture  
8 action or have been seized for forfeiture by any state or federal agency may not be used to satisfy  
9 a judgment unless and until the assets have been released following the conclusion of the  
10 forfeiture action or released by the agency that seized the assets.

11 Section 20. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Any action for damages under this Act shall be commenced within six years of the time the  
14 plaintiff knew, or had reason to know, of any injury caused by violations of this Act. The  
15 knowledge of a parent, guardian, or custodian may not be imputed to the minor.

16 For a plaintiff, the statute of limitations under this section is tolled while any potential  
17 plaintiff is incapacitated by minority.

18 Section 21. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 On motion by a governmental agency involved in an investigation or prosecution, any civil  
21 action brought under this Act shall be stayed until the completion of the criminal investigation  
22 or prosecution that gave rise to the motion for a stay of the action. The statute of limitations as  
23 provided in section 20 of this Act shall be tolled for the time any such stay is in effect.

24 Section 22. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person who is convicted of an offense under this Act shall forfeit to the state the person's  
3 interest in the following and no property right exists in them:

4 (1) Any photograph, film, videotape, book, digital media or visual depiction that has been  
5 manufactured, distributed, purchased, possessed, acquired, or received in violation of  
6 this Act;

7 (2) Any material, product, and equipment of any kind that is used or intended for use in  
8 manufacturing, processing, publishing, selling, possessing, or distributing any visual  
9 depiction proscribed by this Act;

10 (3) Any property that is used, or intended for use, as a container for property described  
11 in subdivisions (1) and (2) of this section, including any computers and digital media;

12 (4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or  
13 conceal, or that is used, or intended for use, to transport, or in any manner facilitate  
14 the transportation, sale, receipt, possession or concealment of any visual depiction  
15 proscribed under this Act;

16 (5) Any book, record, and research, including microfilm, tape, and data that is used, or  
17 intended for use, in violation of this Act;

18 (6) Any funds or other things of value used for the purposes of unlawfully purchasing,  
19 attempting to purchase, distributing, or attempting to acquire or distribute any visual  
20 depiction proscribed by this Act;

21 (7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful  
22 sale or purchase, attempted sale or purchase, distribution, or attempted distribution  
23 of any visual depiction proscribed by this Act.

24 Any property described in subdivision (1) of this section shall be deemed contraband and

1 shall be summarily forfeited to the state. Any other property seized and forfeited shall be used  
2 to reimburse the actual costs of the criminal investigation and prosecution. Any amount over and  
3 above the amount necessary to reimburse for the investigation and prosecution shall be used to  
4 satisfy any civil judgments. The secretary of the Department of Social Services shall promulgate  
5 rules, pursuant to chapter 1-26, to implement the distribution of seized and forfeited assets.

6 Section 23. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 Any person working at or for an internet service provider or other electronic communication  
9 service who has knowledge of or observes, within the scope of the person's professional capacity  
10 or employment, a visual depiction that depicts a minor whom the person knows or reasonably  
11 should know to be under the age of eighteen, engaged in prohibited sexual acts or in the  
12 simulation of prohibited sexual acts, shall report the depiction to his or her employer or  
13 supervisor. The depiction shall then be reported to an appropriate law enforcement agency as  
14 soon as reasonably possible. The provider need not report to law enforcement depictions  
15 involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual  
16 acts. This section may not be construed to require a provider to review all visual depictions  
17 received by subscribers or handled by the provider within the provider's professional capacity or  
18 employment.

19 It is unlawful for any owner or operator of a computer on-line service, internet service, or  
20 local internet bulletin board service knowingly to permit a subscriber to utilize the service to  
21 produce or reproduce visual depictions of prohibited sexual acts with a minor.

22 A violation of this section is a Class 1 misdemeanor. However, a violation of this section  
23 does not constitute grounds for a civil action for damages against any person.

24 Section 24. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person working at or for a commercial film and photograph print processor who has  
3 knowledge of or observes, within the scope of the processor's professional capacity or  
4 employment, a film, photograph, video tape, negative, slide or other visual depiction that depicts  
5 a minor whom the processor knows or reasonably should know to be under the age of eighteen,  
6 engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the  
7 depiction to his or her employer or supervisor. The depiction shall then be reported to an  
8 appropriate law enforcement agency as soon as reasonably possible. The processor need not  
9 report to law enforcement depictions involving mere nudity of the minor, but shall report visual  
10 depictions involving prohibited sexual acts. This section may not be construed to require a  
11 processor to review all films, photographs, videotapes, negatives, or slides delivered to the  
12 processor within the processor's professional capacity or employment.

13 It is unlawful for any owner or operator of a photography or film studio, photograph or film  
14 developing service, photograph or film reproducing service, or video to film reproducing service  
15 knowingly to permit any person to utilize photograph or film reproduction or development  
16 services to produce or reproduce visual depictions of prohibited sexual acts with a minor.

17 A violation of this section is a Class 1 misdemeanor. However, a violation of this section  
18 does not constitute grounds for a civil action for damages against any person.

19 Section 25. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 Any commercial computer repair technician who has knowledge of or observes, within the  
22 scope of the technician's professional capacity or employment, a film, photograph, video tape,  
23 negative, slide or other visual depiction of a minor whom the technician knows or reasonably  
24 should know to be under the age of eighteen, engaged in prohibited sexual acts or in the

simulation of prohibited sexual acts, shall report the depiction to an appropriate law enforcement agency as soon as reasonably possible. The computer repair technician need not report to law enforcement depictions involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual acts. This section may not be construed to require a computer repair technician to review all data, disks, or tapes delivered to the computer repair technician within the computer repair technician's professional capacity or employment.

A violation of this section is a Class 1 misdemeanor. However, a violation of this section does not constitute grounds for a civil action for damages against any person.

Section 26. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as follows:

This Act does not apply to the performance of official duties by any law enforcement officer, court employee, attorney, licensed physician, psychologist, social worker, or any person acting at the direction of a licensed physician, psychologist, or social worker in the course of a bona fide treatment or professional education program.

Section 27. That § 43-43B-1 be amended to read as follows:

43-43B-1. A person is guilty of unlawful use of a computer system, software, or data if ~~he~~ the person:

- (1) Knowingly obtains the use of, ~~or~~ accesses or exceeds authorized access to, a computer system, or any part thereof, without the consent of the owner;
- (2) Knowingly ~~alters or destroys computer programs or data without the consent of the owner; or~~ obtains the use of, accesses, or exceeds authorized access to, a computer system, or any part thereof, without the consent of the owner, and the access or use includes access to confidential data or material;
- (3) Knowingly ~~obtains use of, alters, accesses or destroys a computer system, or any part~~



1 ~~thereof, as part of a deception for the purpose of obtaining money, property or~~  
2 ~~services from the owner of a computer system or any third party; or~~ copies or obtains  
3 information from a computer system, or compromises any security controls for the  
4 computer system, or uses or discloses to another, or attempts to use or disclose to  
5 another, the numbers, codes, passwords, or other means of access to a computer  
6 system without the consent of the owner;

7 (4) ~~Knowingly uses or discloses to another or attempts to use or disclose to another the~~  
8 ~~numbers, codes, passwords or other means of access to a computer, computer~~  
9 ~~program or computer system without the consent of the owner~~ disrupts, denies, or  
10 inhibits access to software or data without the consent of the owner;

11 (5) Knowingly disrupts, denies, or inhibits access to a computer system, without consent  
12 of the owner;

13 (6) Knowingly modifies, changes, or alters software or data, without the consent of the  
14 owner;

15 (7) Knowingly obtains use of, alters, accesses, or exceeds authorized access to, destroys,  
16 disables, or inhibits access to a computer system, as part of a deception for the  
17 purpose of obtaining money, property, or services from the owner of a computer  
18 system, or any third party;

19 (8) Knowingly destroys or disables a computer system, without consent of the owner; or

20 (9) Knowingly destroys or disables software or computer data, without consent of the  
21 owner.

22 Section 28. That § 43-43B-2 be amended to read as follows:

23 43-43B-2. Terms used in this chapter, ~~unless the context requires otherwise,~~ mean:

24 (1) "Access," to instruct, communicate with, store data in, retrieve data from a ~~computer,~~

1 computer system ~~or computer network~~;

2 (2) "Computer," an internally programmed, general purpose digital device capable of  
3 automatically accepting data, processing data and supplying the results of the  
4 operation;

5 (3) ~~"Computer program Software,"~~ a series of coded instructions or statements in a form  
6 acceptable to a computer system, which causes the computer system to process data  
7 in order to achieve a certain result;

8 (4) "Computer system," ~~a set of related, connected devices, including a computer and~~  
9 ~~other devices, including but not limited to~~ includes any computer, computer network,  
10 other related device, data input and output and storage devices, and data  
11 communications links, ~~and computer programs and data, that make the system capable~~  
12 ~~of performing the special purpose data processing tasks for which it is specified;~~

13 (5) "Computer network," a set of related, connected network electronics and  
14 communications links that allows any computer system to communicate with any  
15 other computer system;

16 (5A) "Data," digitized information in any form that may be accessed by a computer system,  
17 regardless of whether the information is in transmission or stored on a computer  
18 system, diskette, compact diskette, cd-rom, tape, or in any other medium;

19 (6) "Destroy," to make unusable, render inoperable, render unable to accept or process  
20 data, or supply results, render unable to perform data processing tasks or cause  
21 computer networks to be unable to transfer data between computer systems for any  
22 amount of time.

23 Section 29. That § 43-43B-3 be amended to read as follows:

24 43-43B-3. ~~A person convicted of a violation of subdivision 43-43B-1 (1), (2), or (4) where~~

~~the value of the use, alteration, destruction, access or disclosure is one thousand dollars or less~~  
~~is guilty of~~ Violations of the provisions of § 43-43B-1 are punishable as follows:

(1) For a violation of subdivision (1), a Class 1 misdemeanor;

(2) For a violation of subdivision (2) or (3), a Class 6 felony;

(3) For a violation of subdivision (4), a Class 5 felony;

(4) For a violation of subdivision (5) or (6), a Class 4 felony;

(5) For a violation of subdivision (8) or (9), a Class 3 felony;

(6) For a violation of subdivision (7), a Class 2 felony.

Section 30. That § 43-43B-4 be repealed.

~~43-43B-4. A person convicted of a violation of subdivision 43-43B-1 (1), (2), or (4) where~~  
~~the value of the use, alteration, destruction, access or disclosure is more than one thousand~~  
~~dollars is guilty of a Class 6 felony.~~

Section 31. That § 43-43B-5 be repealed.

~~43-43B-5. A person convicted of a violation of subdivision 43-43B-1 (3) where the value of~~  
~~the money, property or services obtained is one thousand dollars or less is guilty of a Class 1~~  
~~misdemeanor.~~

Section 32. That § 43-43B-6 be repealed.

~~43-43B-6. A person convicted of a violation of subdivision 43-43B-1 (3) where the value of~~  
~~the money, property or services obtained is more than one thousand dollars shall be guilty of a~~  
~~Class 4 felony.~~

Section 33. That § 22-22-25 be amended to read as follows:

22-22-25. Sections 22-22-23 and Section 22-22-24 shall and sections 7, 8, and 10 of this Act  
do not apply to the selling, lending, distributing, exhibiting, giving away, showing, possessing,  
or making of films, photographs, or other materials involving only nudity, if such the materials

- 1 are made for and have a serious literary, artistic, educational, or scientific value.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0712

## SENATE ENGROSSED NO. **SB 185** - 02/05/2002

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation to fund tax refunds for elderly and  
2 disabled persons and to revise the income eligibility requirements for property tax and sales  
3 tax refunds.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. There is hereby appropriated from the general fund the sum of one million dollars  
6 (\$1,000,000), or so much thereof as may be necessary, to the Department of Revenue to provide  
7 refunds for real property tax and sales tax to elderly and disabled persons pursuant chapters 10-  
8 18A and 10-45A. An amount not to exceed ten thousand dollars (\$10,000) in fiscal year 2003  
9 may be used for the administrative costs of this Act.

10 Section 2. The secretary of revenue shall approve vouchers and the state auditor shall draw  
11 warrants to pay expenditures authorized by this Act.

12 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by  
13 June 30, 2003, shall revert in accordance with § 4-8-21.

14 Section 4. That § 10-18A-5 be amended to read as follows:

15 10-18A-5. The amount of refund of real property taxes due or paid for a single-member



|  | If household income is        |                                   | The refund of real property taxes due or paid shall be |
|--|-------------------------------|-----------------------------------|--|
|  | more than:                    | but less than                     |  |
|  | \$ 0                          | <del>\$3,250</del> <u>\$3,500</u> | 35%  |
|  | <del>3,251</del> <u>3,501</u> | <del>3,510</del> <u>3,760</u>     | 34%  |
|  | <del>3,511</del> <u>3,761</u> | <del>3,770</del> <u>4,020</u>     | 33%  |
|  | <del>3,771</del> <u>4,021</u> | <del>4,030</del> <u>4,280</u>     | 32%  |
|  | <del>4,031</del> <u>4,281</u> | <del>4,290</del> <u>4,540</u>     | 31%  |
|  | <del>4,291</del> <u>4,541</u> | <del>4,550</del> <u>4,800</u>     | 30%  |
|  | <del>4,551</del> <u>4,801</u> | <del>4,810</del> <u>5,060</u>     | 29%  |
|  | <del>4,811</del> <u>5,061</u> | <del>5,070</del> <u>5,320</u>     | 28%  |
|  | <del>5,071</del> <u>5,321</u> | <del>5,330</del> <u>5,580</u>     | 27%  |
|  | <del>5,531</del> <u>5,581</u> | <del>5,590</del> <u>5,840</u>     | 26%  |
|  | <del>5,591</del> <u>5,841</u> | <del>5,850</del> <u>6,100</u>     | 25%  |
|  | <del>5,851</del> <u>6,101</u> | <del>6,110</del> <u>6,360</u>     | 24%  |
|  | <del>6,111</del> <u>6,361</u> | <del>6,370</del> <u>6,620</u>     | 23%  |
|  | <del>6,371</del> <u>6,621</u> | <del>6,630</del> <u>6,880</u>     | 22%  |
|  | <del>6,631</del> <u>6,881</u> | <del>6,890</del> <u>7,140</u>     | 21%  |
|  | <del>6,891</del> <u>7,141</u> | <del>7,150</del> <u>7,400</u>     | 20%  |
|  | <del>7,151</del> <u>7,401</u> | <del>7,410</del> <u>7,660</u>     | 19%  |
|  | <del>7,411</del> <u>7,661</u> | <del>7,670</del> <u>7,920</u>     | 18%  |
|  | <del>7,671</del> <u>7,921</u> | <del>7,930</del> <u>8,180</u>     | 17%  |
|  | <del>7,931</del> <u>8,181</u> | <del>8,190</del> <u>8,440</u>     | 16%  |
|  | <del>8,191</del> <u>8,441</u> | <del>8,450</del> <u>8,700</u>     | 15%  |
|  | <del>8,451</del> <u>8,701</u> | <del>8,710</del> <u>8,960</u>     | 14%  |
|  | <del>8,711</del> <u>8,961</u> | <del>8,970</del> <u>9,220</u>     | 13%  |
|  | <del>8,971</del> <u>9,221</u> | <del>9,230</del> <u>9,480</u>     | 12%  |
|  | <del>9,231</del> <u>9,481</u> | <del>9,500</del> <u>9,750</u>     | 11%  |

1 over ~~9,500~~ 9,750 No refund

2 Section 5. That § 10-18A-6 be amended to read as follows:

3 10-18A-6. The amount of refund of real property taxes due or paid for a multiple-member  
4 household made pursuant to this chapter shall be according to the following schedule:

| 5  |                                      |                                   | The refund of real |
|----|--------------------------------------|-----------------------------------|--------------------|
| 6  | If household income is               |                                   | property taxes due |
| 7  | at least:                            | but not more than                 | or paid shall be   |
| 8  | \$ 0                                 | <del>\$6,000</del> <u>\$6,250</u> | 55%                |
| 9  | <del>6,001</del> <u>6,251</u>        | <del>6,361</del> <u>6,611</u>     | 53%                |
| 10 | <del>6,362</del> <u>6,612</u>        | <del>6,722</del> <u>6,972</u>     | 51%                |
| 11 | <del>6,723</del> <u>6,973</u>        | <del>7,083</del> <u>7,333</u>     | 49%                |
| 12 | <del>7,084</del> <u>7,334</u>        | <del>7,444</del> <u>7,694</u>     | 47%                |
| 13 | <del>7,445</del> <u>7,695</u>        | <del>7,805</del> <u>8,055</u>     | 45%                |
| 14 | <del>7,806</del> <u>8,056</u>        | <del>8,166</del> <u>8,416</u>     | 43%                |
| 15 | <del>8,167</del> <u>8,417</u>        | <del>8,527</del> <u>8,777</u>     | 41%                |
| 16 | <del>8,528</del> <u>8,778</u>        | <del>8,888</del> <u>9,138</u>     | 39%                |
| 17 | <del>8,889</del> <u>9,139</u>        | <del>9,249</del> <u>9,499</u>     | 37%                |
| 18 | <del>9,250</del> <u>9,500</u>        | <del>9,610</del> <u>9,860</u>     | 35%                |
| 19 | <del>9,611</del> <u>9,861</u>        | <del>9,971</del> <u>10,221</u>    | 33%                |
| 20 | <del>9,972</del> <u>10,222</u>       | <del>10,332</del> <u>10,582</u>   | 31%                |
| 21 | <del>10,333</del> <u>10,583</u>      | <del>10,693</del> <u>10,943</u>   | 29%                |
| 22 | <del>10,694</del> <u>10,944</u>      | <del>11,054</del> <u>11,304</u>   | 27%                |
| 23 | <del>11,055</del> <u>11,305</u>      | <del>11,415</del> <u>11,665</u>   | 25%                |
| 24 | <del>11,416</del> <u>11,666</u>      | <del>11,776</del> <u>12,026</u>   | 23%                |
| 25 | <del>11,777</del> <u>12,027</u>      | <del>12,137</del> <u>12,387</u>   | 21%                |
| 26 | <del>12,138</del> <u>12,388</u>      | <del>12,500</del> <u>12,750</u>   | 19%                |
| 27 | over <del>12,500</del> <u>12,750</u> |                                   | No refund          |

28 Section 6. That § 10-45A-5 be amended to read as follows:

10-45A-5. The amount of any claim made pursuant to this chapter by a claimant from a household consisting solely of one individual shall be determined as follows:

- (1) If the claimant's income is three thousand ~~two hundred fifty~~ five hundred dollars or less, a sum of two hundred fifty-eight dollars;
- (2) If the claimant's income is three thousand ~~two hundred fifty-one~~ five hundred one dollars and not more than nine thousand ~~five hundred~~ seven hundred fifty dollars, a sum of forty-six dollars plus three and four-tenths percent of the difference between nine thousand seven hundred fifty dollars and the income of the claimant;
- (3) If the claimant's income is more than nine thousand ~~five hundred~~ seven hundred fifty dollars, no refund.

Section 7. That § 10-45A-6 be amended to read as follows:

10-45A-6. The amount of any claim made pursuant to this chapter by a claimant from a household consisting of more than one individual shall be determined as follows:

- (1) If household income is six thousand two hundred fifty dollars or less, the sum of five hundred eighty-one dollars;
- (2) If household income is six thousand ~~one~~ two hundred fifty-one dollars and not more than twelve thousand ~~five hundred~~ seven hundred fifty dollars, a sum of seventy-four dollars plus seven and eight-tenths percent of the difference between twelve thousand seven hundred fifty dollars and total household income;
- (3) If household income is more than twelve thousand ~~five hundred~~ seven hundred fifty dollars, no refund.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

744H0762

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SJR 5** - 02/15/2002

Introduced by: Senators Bogue, Albers, Apa, Brosz, Brown (Arnold), Craddock, Daugaard, de Hueck, Dennert, Diedrich (Larry), Diedrich (Elmer), Drake, Duxbury, Everist, Greenfield, Hagen, Ham, Hutmacher, Kleven, Koetzle, Madden, McCracken, McIntyre, Moore, Munson, Olson (Ed), Putnam, Reedy, Staggers, Sutton (Dan), Symens, Vitter, Volesky, and Whiting and Representatives Olson (Mel), Abdallah, Bartling, Begalka, Bradford, Broderick, Brown (Richard), Burg, Clark, Davis, Derby, Duniphan, Elliott, Flowers, Frost, Fryslie, Garnos, Gillespie, Glenski, Hansen (Tom), Hargens, Heineman, Hennies (Don), Hennies (Thomas), Hundstad, Hunhoff, Jensen, Juhnke, Klaudt, Koistinen, Lange, Lintz, Madsen, McCaulley, McCoy, Michels, Monroe, Murschel, Nesselhuf, Pederson (Gordon), Peterson (Bill), Peterson (Jim), Pitts, Pummel, Rhoden, Sebert, Sigdestad, Slaughter, Smidt, Solum, Sutton (Duane), Teupel, Valandra, Van Etten, Van Gerpen, Van Norman, and Wick

1 A JOINT RESOLUTION, Proposing and submitting to the electors at the next general election  
2 amendments to Article III of the Constitution of the State of South Dakota, relating to  
3 legislative appointments and conflicts of interest.

4 BE IT RESOLVED BY THE SENATE OF THE STATE OF SOUTH DAKOTA, THE  
5 HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

6 Section 1. That at the next general election held in the state, the following amendments to  
7 Article III of the Constitution of the State of South Dakota, as set forth in sections 2 and 3 of  
8 this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state



1 for approval.

2 Section 2. That Article III of the Constitution, of the State of South Dakota, be amended by  
3 adding thereto a NEW SECTION to read as follows:

4 § 33. No member of the Legislature may accept any appointment or election to a state or  
5 local office during any term in the Legislature if the office was created or its compensation  
6 increased during that term.

7 No member may accept paid employment directly with, or appointment to any office by, the  
8 Governor, the Governor and the Senate, or the Legislature.

9 No member may contract with the state or any of its offices, departments, boards, agencies,  
10 commissions, or institutions, for the provision of commodities, services as an independent  
11 contractor, or public improvements, or to convey or lease real property. The prohibition against  
12 contracting with the state applies if the member enters into a contract individually or through  
13 businesses that the member owns or controls, and the prohibition is effective during the member's  
14 term in the Legislature in which the contract was authorized and for one year thereafter.

15 All actions, including votes, appointments, or contracts, that violate this section are void.

16 Section 3. That Article III, section 12, of the Constitution of the State of South Dakota be  
17 repealed.